

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

RODNEY D. PIERCE, et al,)	
)	
<i>Plaintiffs,</i>)	Docket No.
)	4:23-CV-193-D-RN
v.)	
)	
THE NORTH CAROLINA STATE)	
BOARD OF ELECTIONS, et al,)	
)	
<i>Defendants.</i>)	

WEDNESDAY, FEBRUARY 5, 2025
BENCH TRIAL - DAY 3 A.M. SESSION
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

JENNIFER C. CARROLL, RMR, CRR, CRC
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

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1 Wednesday, February 5, 2025, at 9:00 a.m.

2 **P R O C E E D I N G S**

3 **LOREN COLLINGWOOD,**

09:00:23 4 having been previously sworn, testified as follows:

09:00:23 5 THE COURT: Good morning. Just so that the
09:00:25 6 lawyers know how much time I have for each, my math is that
09:00:30 7 the plaintiffs have used 402 minutes, the defenses has used
09:00:35 8 241 minutes. We are on track and I thank you for your
09:00:37 9 efficiency in conducting the trial.

09:00:41 10 You may continue the cross-examination,
09:00:43 11 Ms. McKnight.

09:00:44 12 MS. McKNIGHT: Thank you very much, Your Honor.

09:00:48 13 CROSS-EXAMINATION BY MS. McKNIGHT:

09:00:49 14 Q. Good morning, Dr. Collingwood.

09:00:50 15 A. Good morning.

09:00:51 16 Q. We'll get right back to it.

09:00:54 17 Would you agree with me that one way to determine the
09:00:58 18 amount of BVAP necessary for a district to perform for
09:01:04 19 Black-preferred candidates is to look at how a district at
09:01:07 20 a certain BVAP level performs in different elections?

09:01:15 21 A. Yes.

09:01:18 22 Q. And you can do that by recompiling election results in
09:01:23 23 a proposed district; correct?

09:01:26 24 A. That is one way to do it. Yes.

09:01:28 25 Q. Okay. Yesterday afternoon just before we departed, we

09:01:33 1 discussed the performance of plaintiff's demonstration
09:01:36 2 districts across 49 elections spanning four election
09:01:43 3 cycles. Do you remember that?

09:01:44 4 A. Yes.

09:01:45 5 Q. And that was for the years 2016 to 2022; is that
09:01:51 6 correct?

09:01:51 7 A. Yes.

09:01:53 8 Q. And the district performance we discussed yesterday
09:01:56 9 showed that the districts performed for Black-preferred
09:01:58 10 candidates in every single election; right?

09:02:04 11 A. In the demonstration districts?

09:02:07 12 Q. Correct.

09:02:07 13 A. Correct.

09:02:10 14 Q. And Black-preferred candidates in the demonstration
09:02:13 15 districts won with win margins of on average between 10 and
09:02:20 16 20 points; sometimes a little below, sometimes a little
09:02:24 17 above. Is that fair to say?

09:02:30 18 A. That sounds right, if that's what you're representing
09:02:33 19 to me.

09:02:37 20 Q. Dr. Collingwood, do you know the BVAP level of the
09:02:42 21 demonstration districts?

09:02:50 22 A. Not off the top of my head.

09:02:51 23 Q. Okay. Would it help to look at an exhibit to refresh
09:02:54 24 your memory?

09:02:57 25 A. Sure.

Q. Okay. Let's pull up Mr. Esselstyn's report which was discussed yesterday. This is PX 69. We'll start at page 14.

Dr. Collingwood, do you see the section titled, "Demonstration District A and Demonstration Map A"?

A. Yes.

Q. And in the last full sentence, I see a reference to the BVAP for the district is 51.47 percent. Do you see that?

A. Yes.

Q. Okay. Let's look at Demonstration C on page 20 of PX 69.

Dr. Collingwood, do you see the section titled, "Demonstration District C and Demonstration Map C?"

A. Yes.

Q. Okay. And in the last full sentence in that section, I see the phrase, "The BVAP for the district is 50.21 percent." Do you see that?

A. Yes.

Q. Okay. So now let's look at Demonstration District D, and then we'll show all of these snippets together so you can see them all together.

Let's turn to page 24 of PX 69.

Dr. Collingwood, do you see on page 24 of PX 69 a title, "Table 8: Statistics for Demonstration Districts D

1 and D-2"?

2 A. Yes.

3 Q. Okay. And in that table, do you see a BVAP level for
4 Demonstration District D at 49.22 percent?

5 A. Yes.

6 Q. Okay. So let's pull all of these snippets together on
7 the screen so you can have them together while I ask you a
8 few questions.

9 It's a little blurry, but can you still make out the
10 numbers there, Dr. Collingwood?

11 A. They look fine to me.

12 Q. Okay. So stepping back and going back to our
13 discussion of the results, the performance results for
14 Demonstration Districts A, C, and D, with results like the
15 one we discussed where the Black-preferred candidates
16 always win with some margins regularly greater than 20
17 percentage points and usually between 10 and 20 percentage
18 points, and understanding that these districts have been
19 drawn at levels of BVAP that are 51, 50, and 49 percent
20 BVAP, does this evidence support a conclusion that these
21 districts as drawn don't need 50 percent BVAP in order to
22 perform for a Black-preferred candidate?

23 A. These districts? Well, I see District D -- Districts
24 D here. You say the BVAP is 49.22 and then that districts
25 performing in all of my analyses. So that's evidence of

1 that one -- at least for that one.

2 Q. Okay. And so for Demonstration Districts A and C,
3 when you see win margins regularly greater than 20
4 percentage points, and usually between 10 and 20 percentage
5 points, is that some evidence to support a conclusion that
6 districts drawn at 51.47 percent BVAP and 50.21 percent
7 BVAP may not need to be drawn at 50 percent or above BVAP
8 in order to perform for Black-preferred candidates?

9 A. I mean, of course, I would have to run the numbers to
10 be sure. But that's suggestive, yes.

11 Q. Okay. And you didn't run those districts' specific
12 numbers in this case, did you?

13 A. No.

14 Q. Okay. Now, I know there was a discussion yesterday
15 about a concern for more recent years' elections. So I
16 would like to take a look at how the lowest BVAP level
17 district -- Demonstration District D -- performed in the
18 most recent year you studied, which is 2022.

19 For that discussion, let's pull up PX 36 at 20.

20 Now, Dr. Collingwood, this page shows your electoral
21 performance results 2022 for each demonstration district;
22 correct?

23 A. That's correct.

24 Q. Okay. Now, looking at Demonstration District D, I'm
25 seeing win margins of 8 for the first election. Is that

1 what you're seeing?

2 A. Correct.

3 Q. I'm seeing win margins of nearly 6 for the second
4 selection. Do you see that, too?

5 A. That looks about right.

6 Q. For the third election down, I'm seeing a win margin
7 of nearly 7 percentage points. Do you see that, too?

8 A. Yes.

9 Q. For the fourth and fifth elections down, I'm seeing
10 win margins at over 7 percent -- percentage points. Do you
11 agree with that read?

12 A. Yes.

13 Q. And then for the last two elections, I'm seeing win
14 margins of 8.2 percentage points and 8 percentage points.
15 Do you agree with my read of this chart?

16 A. It looks about right.

17 Q. Okay. And to state the obvious, those aren't narrow
18 50-percent-plus-one wins, are they?

19 A. No. But any time you're starting to get down into
20 single digits, one is starting to -- you know, overall
21 average of seven points -- I've done performance analyses
22 where the win margin is five to seven and that district
23 later does not perform.

24 Q. Okay. Thank you.

25 A. For a variety of reasons, whether that's voter turnout

1 differential, midterms, et cetera.

2 Q. Or maybe how the district is drawn and which precincts
3 it picks up?

4 A. That wasn't really what I was thinking when I was
5 saying that. But I suppose that's a possibility.

6 Q. Okay. So even a district drawn below 50 percent BVAP,
7 here Demonstration D is always performing with a win margin
8 range of roughly six to over eight percentage points;
9 correct?

10 A. With respect to the data, yes, one would draw that
11 broad conclusion.

12 Q. I would like to ask you some questions about a table
13 in your report. Let's go to PX 36 at page 6.

14 In this table, you list contests analyzed between 2016
15 and 2018; is that right?

16 A. Correct.

17 Q. In the two columns farthest to the right titled, "SS-1
18 Blocked and SS-2 Blocked," you have asterisks next to the
19 words "yes" for 2018 State Supreme Court and Court of
20 Appeals seat 2 races. Do you see that?

21 A. Correct.

22 Q. These asterisks indicate that the Black-preferred
23 candidate received a lower vote total than the two
24 White-preferred candidates; is that right?

25 A. What it means is -- the reason why there's an asterisk

1 there is those are the two contests where we have -- I have
2 combined the two candidates that are getting support from
3 the White vote together and the Black candidate --
4 Black-preferred candidate is running separately. So
5 they're kind of unique to those particular elections, so I
6 wanted to indicate that.

7 Q. Okay. But the Black-preferred candidate received a
8 higher vote total than either of the White-preferred
9 candidates individually; is that right?

10 A. Yes. That's correct. So what you have is a situation
11 where the Black-preferred candidate outperforms the top
12 White-preferred candidate narrowly, but when you combine
13 the two White-preferred candidates together, that -- those
14 two candidates combined receive more vote than the
15 Black-preferred candidate and, therefore, is blocking the
16 Black-preferred candidate.

17 Q. But the Black-preferred candidate won that election;
18 correct?

19 A. The Black-preferred candidate -- I would have to go
20 back and see. I think they got the most votes. So they
21 probably did win. But remember, we're trying to produce
22 estimates about a legislative district. And so typically
23 what you have is a situation where you have a Democrat and
24 a Republican, a two-candidate scenario. So that's why we
25 would do that in this particular case. It's somewhat

09:12:59 1 common to do this. And in order to ensure that I'm not
09:13:04 2 just putting two White-preferred candidates together
09:13:07 3 because I say I am, I correlate the data, basically percent
09:13:13 4 Black or percent White in support for these different
09:13:15 5 candidates, so I know they're basically drawing from the
09:13:19 6 same voting base.

09:13:21 7 Q. I heard you reference a two-candidate race. This was
09:13:24 8 not a two-candidate race; correct?

09:13:26 9 A. Right. But what we're doing is we're predicting on to
09:13:30 10 what a two-candidate typical legislative district race will
09:13:35 11 be.

09:13:35 12 Q. But you don't know what a two-candidate race in the
09:13:39 13 2018 State Supreme Court race would look like, do you?

09:13:43 14 A. Well, there weren't -- you know, typically what you
09:13:48 15 have is you have either two candidates that are competitive
09:13:52 16 or you have a few minor party candidates that get in there
09:13:56 17 that aren't really consequential. Here, in this case, you
09:14:01 18 had candidates getting, you know, decent amounts of votes,
09:14:05 19 third-party candidates or what have you, or additional
09:14:08 20 candidates running that were pulling in some votes. I
09:14:11 21 think they might have also been Republican. I have to
09:14:13 22 double check.

09:14:14 23 Q. Okay.

09:14:14 24 A. So it makes sense in that case.

09:14:16 25 The two choices that one would make is one would just

1 drop that. Maybe three choices. Or they would only look
2 at Jackson, I think. Or they would combine them like what
3 I did.

4 So those are the three choices. I chose one. If
5 someone wants to disagree, they can do that if they would
6 like.

7 Q. Okay. Thank you.

8 And so for both of these cases, is it fair to say that
9 the Black-preferred candidate won?

10 A. I think that -- I would have to go back and actually
11 look at what the North Carolina Board of Elections data
12 said. I can't recall off the top of my head if they
13 actually did win or if it went to a runoff or how that was
14 determined.

15 Q. I see. But they -- in both of these cases, the
16 Black-preferred candidate garnered more votes than any of
17 the other individual candidates; correct?

18 A. That is true. Yes. That's why I noted that and wrote
19 about it in my report.

20 Q. I see. But you marked them as yes blocked, all -- in
21 all four cells; isn't that right?

22 A. Yes. For the reasons I've -- which I've just
23 outlined.

24 Q. Okay. And you didn't discuss these elections
25 yesterday on direct examination; right?

09:15:28 1 A. I mean, they were -- I didn't -- I didn't discuss them
09:15:32 2 separately.

09:15:39 3 Q. Okay. So let's pull up slide 15 of your
09:15:50 4 demonstrative.

09:15:59 5 So pardon me. Let's step back, Dr. Collingwood.
09:16:03 6 Let's go to page 16 of your report. So that's PX 36 at
09:16:08 7 page 16.

09:16:17 8 Figure 7 here contains the results of your electoral
09:16:21 9 performance analysis for those 2018 elections; correct?

09:16:27 10 A. That's correct.

09:16:28 11 Q. Okay. And you explain at page 15 --

09:16:31 12 If we could pull up 15 alongside 16 so you can see.

09:16:36 13 You explain on page 15 of your report that two
09:16:39 14 candidates, Griffin -- oh, let me pull it up first.

09:16:45 15 Okay. Do you see page 15 of your report,
09:16:47 16 Dr. Collingwood?

09:16:50 17 A. Yes.

09:16:50 18 Q. Okay. And so here on page 15, you report that two
09:16:55 19 candidates, Griffin and Ray, received a combined majority
09:16:59 20 of the vote. Do you see that?

09:17:01 21 A. Yes.

09:17:02 22 Q. While the Black-preferred candidate -- Hampson --
09:17:05 23 received a minority of the vote. Do you see that?

09:17:11 24 A. Yes.

09:17:12 25 Q. But the Black-preferred candidate -- Hampson --

1 recorded the highest vote total among the three candidates
2 in the enacted SD1 and SD2; correct?

3 A. Correct.

4 Q. You make the point that in a two-candidate race, White
5 bloc voting would successfully defeat the Black-preferred
6 candidate; right?

7 A. Right.

8 Q. But you don't know that because this was not a
9 two-candidate race; correct?

10 A. I mean, I suppose an asteroid could hit us and kill
11 us. I don't know that that will happen. But what I know
12 is that the two White-preferred candidates are pulling from
13 the same base. And so what -- by "base," what I mean is
14 they're pulling the same racial base groups and they're also
15 in opposition to the Black-preferred candidate. So
16 assuming if one of them had dropped out, their voters would
17 have gone on to the other candidate into a two-candidate
18 race and the Black-preferred candidate would have lost.

19 Q. But we're not talking about asteroids, are we?

20 A. We actually are.

21 Q. Well, I understood -- pardon me.

22 A. You just said the word "asteroid" and so did I, so I
23 suppose we are.

24 Q. Dr. Collingwood, you just told us that you made an
25 assumption that if one of those two White-preferred

1 candidates dropped out, the voters would move to the other
2 candidate. Did I hear you correctly?

3 A. Yes.

4 Q. So that's an assumption that you made in preparing
5 your report?

6 A. Yes. That is basically a data-driven assumption based
7 on correlating data together. This is discussed by other
8 experts in literature in the field of political science.
9 You have to build in assumptions when you're doing
10 something like this because otherwise you basically drop
11 the data out or, if you don't put it together, you
12 potentially make an assumption that's in a different
13 direction that would lead to a finding that is at odds with
14 all of the other data that you're seeing.

15 If you see, for example, the overall trend here is for
16 narrow victories. And especially in Senate District 1, you
17 see a narrow victory. Say, for example, in the first
18 election, Heath versus Arrowwood, you see a narrow victory
19 for the White-preferred candidate, and you see a similar
20 set of findings down the -- basically, down the line. And
21 so the combinations are basically relatively consistent
22 with the overall set of findings that we're seeing here.
23 That's additional information one can bring in to think
24 that the decision to combine these candidates together
25 is -- is a fair one.

09:20:40 1 Q. I see. So in Figure 7, we've been discussing
09:20:43 2 Griffin/Ray. I would like to focus on the 2018 State
09:20:46 3 Supreme Court race. Do you see it down below?

09:20:48 4 A. Yes.

09:20:49 5 Q. Okay. And here again, there are two names and there's
09:20:52 6 a comma. Jackson, comma, Anglin. Do you see that?

09:20:56 7 A. Yes.

09:20:56 8 Q. And so that indicates that you combined the vote
09:21:00 9 totals for both of those candidates in one bar. Do you see
09:21:04 10 that?

09:21:04 11 A. That's correct.

09:21:05 12 Q. Okay. And so if you had separated those vote totals
09:21:09 13 into two separate bars, would this indicate that Earls had
09:21:16 14 received a higher voting percentage than either of those
09:21:21 15 individual candidates?

09:21:21 16 A. That's correct. I believe that's what I put in my
09:21:23 17 report, which is that the Black-preferred candidate does
09:21:28 18 receive higher vote totals than the top White-preferred
09:21:34 19 candidate. But because, again, you have multiple
09:21:39 20 White-preferred candidates here that are pulling from the
09:21:43 21 same base. And that's a very unique circumstance. With
09:21:47 22 all of the contests that I'm looking at, I think this was
09:21:50 23 the only time that happened. And so to keep things
09:21:56 24 consistent in sort of a two-by-two --
09:22:00 25 two-candidate/two-race scenario, which is what we typically

1 see in a legislative contest -- I made the decision to put
2 these together.

3 Q. Okay. And so considering these two elections where
4 Figure 7 indicates a loss for the Black-preferred candidate
5 but, in fact, the Black-preferred candidate won; is that
6 correct?

7 A. Well, under the guise of this analysis, the
8 Black-preferred candidate is losing. If you re-tallied
9 this and only looked at the top-performing White candidate,
10 then I think they would outperform very slightly the
11 Black-preferred candidate.

12 Q. In which election do you believe that?

13 A. I think it's -- well, the two -- the two with multiple
14 White candidates.

15 Q. Okay.

16 A. Or White-preferred candidates.

17 Q. I must have misunderstood your testimony earlier when
18 you were describing in your report that Hampson received a
19 higher vote total than either individual candidates Griffin
20 or Ray?

21 A. That's what I was just saying.

22 Q. Okay. Then --

23 A. I mean, effectively. I wasn't saying it just like
24 that. But that was basically what I was just saying.

25 Q. Okay. You were saying the Black-preferred candidate

1 in both of these elections garnered a higher vote
2 percentage than either of the individual candidates
3 identified in the green bars; is that right?

4 A. Yes. And that's what I write about in my report.

5 Q. Okay. So let's go to slide 15 of your
6 demonstration -- demonstrative from yesterday. This is a
7 slide deck that plaintiffs had prepared and used with you
8 on direct examination.

9 So here on this slide, you report that White-preferred
10 candidates win in 43 out of the 49 elections in SD1. Do
11 you see that?

12 A. Yes.

13 Q. Okay. But when you consider the two three-way 2018
14 contests where the Black-preferred candidate received the
15 plurality of the vote, that number is actually 41, isn't
16 it?

17 A. Not in the way that I've constructed this analysis.
18 As I've discussed, there's good reason to combine those two
19 candidates together.

20 Q. Okay. So let's turn to page 19 of PX 36.

21 And here I'm reading from the first full paragraph,
22 the last line. Can you read that aloud for the Court?

23 A. You mean, "Figure 9"?

24 Q. Page 19 of PX 36. It's on your screen.

25 A. No, but it starts with, "Figure 9"?

09:25:25 1 Q. It should be up on your screen. The first full
09:25:28 2 paragraph. It starts with, "Thus."

09:25:30 3 A. "Thus."

09:25:31 4 Q. Yes, that's right.

09:25:32 5 A. Thus.

09:25:33 6 "Thus, for the 2023 Enacted State Senate District 1,
09:25:38 7 if we consider 2018 contests as White blocking, the
09:25:44 8 White-preferred candidate prevails in 43 of 49 contests.
09:25:48 9 If we do not consider the two three-way 2018 contests where
09:25:54 10 the Black candidate received the plurality as blocking, the
09:25:58 11 bloc rate drops a bit to 41 of 49."

09:26:03 12 Q. So you would agree with me that if you consider the
09:26:07 13 2018 contests where the Black candidate received a
09:26:12 14 plurality as blocking, you do not consider it as blocking
09:26:15 15 and the bloc rate drops to 41 out of 49; right?

09:26:18 16 A. Yes. What I would say is that basically I have an
09:26:22 17 order of priority here where I say I think the best way to
09:26:25 18 do this is to combine these two candidates together for all
09:26:29 19 of the reasons I have enunciated. But in the situation
09:26:36 20 here where I figured you would ask me many questions, and
09:26:42 21 to be transparent about that, I did put that number in
09:26:46 22 there for transparency.

09:26:50 23 Q. Okay. And you didn't discuss this issue yesterday
09:26:53 24 with the Court, did you?

09:26:56 25 A. No.

09:26:57 1 Q. Okay. So I have some questions for you about
09:27:02 2 crossover voting. Crossover voting is typically defined in
09:27:09 3 cases like this as when White voters are crossing over to
09:27:13 4 vote for a preferred candidate of Black voters; is that
09:27:17 5 right?

09:27:17 6 A. That sounds about right.

09:27:19 7 Q. Okay. And for our discussion, can we agree that the
09:27:23 8 preferred candidate of Black voters tends to be the
09:27:26 9 Democrat candidate?

09:27:31 10 A. Yes.

09:27:34 11 Q. Okay. And in this case, you found levels of crossover
09:27:37 12 voting in North Carolina on a statewide basis on average
09:27:42 13 between 25 and 31 percent; correct?

09:28:03 14 A. Yes.

09:28:06 15 Q. And you found levels of crossover voting in the
09:28:09 16 demonstration region on average between 11 and 21 percent;
09:28:22 17 correct?

09:28:22 18 A. That's about right.

09:28:23 19 Q. Okay. So we'll dig into that figure in just a minute.
09:28:27 20 But for now, do you know what percentage of voters in the
09:28:31 21 demonstration region are Democrats?

09:28:37 22 A. No.

09:28:39 23 Q. Okay. If the population of Republicans in the
09:28:43 24 demonstration region grew relative to Democratic
09:28:48 25 population, then crossover voting would decrease; is that

09:28:53 1 right?

09:28:53 2 A. Sorry. Could you restate that?

09:28:55 3 Q. Sure. If the population of Republican voters in this
09:29:00 4 area of the demonstration region grew relative to
09:29:06 5 Democratic voting population, then we would expect
09:29:10 6 crossover voting to decrease; is that right?

09:29:20 7 A. I mean, that's a realistic conclusion. I can't say,
09:29:25 8 you know, sort of at the expert level of confidence that
09:29:27 9 that would happen. But it's a reasonable assertion.

09:29:31 10 Q. Okay. And when you measured crossover voting in this
09:29:35 11 case, you did not develop any opinion about whether those
09:29:39 12 voters were making voting decisions based on their race or
09:29:44 13 their political affiliation; correct?

09:29:50 14 A. I did not include partisan affiliation of the voter
09:29:55 15 into the racially polarized voting analysis. Those
09:30:01 16 analyses are nonstandard in the field. I've never seen
09:30:04 17 anyone do that.

09:30:28 18 Q. And you did not conduct any form of analysis to
09:30:33 19 determine whether voters were making voting decisions based
09:30:36 20 on race or party; correct?

09:30:44 21 A. When you say "race or party," I guess could you be a
09:30:50 22 little bit more clear about that?

09:30:51 23 Q. Sure. What I'm talking about here, Dr. Collingwood,
09:31:19 24 is a partisan affiliation, and I'm asking you a question
09:31:23 25 about whether you conducted any kind of an analysis to

1 determine whether voting patterns were due to a voter's
2 racial or partisan affiliation.

3 A. Correct.

4 Q. And just to make sure I understand: It's correct that
5 you did not conduct that analysis; right?

6 A. Right. Correct.

7 Q. Okay. Let's dig into the racially polarized voting
8 numbers. Let's start on page 28 of your report, PX 36.
9 This is Figure 15.

10 Dr. Collingwood, do you see Figure 15 on page 28 of PX
11 36 titled, "Racially Polarized Voting 2022 Contests.
12 Enacted State Senate Districts 1 and 2"?

13 A. Yes.

14 Q. Okay. On this page, would crossover voting be
15 indicated by the green bar under the longest blue bar for
16 any election?

17 A. Not exactly. Crossover voting -- well, let's just
18 give an example. Well, yeah, actually -- the only reason I
19 say that is because sometimes the blue bar is the first one
20 and sometimes the green bar is the first one just because
21 how the candidates get entered.

22 But typically, for example, in the 2022 Court of
23 Appeals, number 8, the Black-preferred candidate is
24 getting -- Thompson is getting 94 percent of the vote from
25 Black voters, and White voters are giving Thompson

09:33:38 1 21.4 percent of the vote. And so 20 -- it's estimated that
09:33:43 2 in that contest, 21.4 percent of White voters are crossing
09:33:48 3 over to vote for the Black-preferred candidate.

09:33:53 4 Q. Thank you for that, Dr. Collingwood.

09:33:55 5 I'm going to ask you some questions about similar
09:33:57 6 tables going forward so that helps in us understanding how
09:34:01 7 to read these charts.

09:34:02 8 So on this page, I'm seeing crossover -- a crossover
09:34:09 9 range of between 19.4 and 22.3 for the elections you report
09:34:17 10 in Figure 15. Could you confirm my read of your results
09:34:21 11 here?

09:34:33 12 A. For all of it or for just District 1?

09:34:41 13 Q. Pardon me. This is for -- let's do all of them. And
09:34:47 14 I believe I have a figure off; so let's make sure we get it
09:34:50 15 right.

09:34:51 16 I would like to look at all of the election results,
09:34:54 17 the crossover range for both Districts 1 and District 2. I
09:35:03 18 am seeing a crossover range of between 15.8 and 22.3. Do
09:35:09 19 you see the same?

09:35:19 20 A. That looks right.

09:35:21 21 Q. Okay. Now, let's compare this to your results for the
09:35:25 22 demonstration region with the 2022 elections. That's on
09:35:29 23 page -- the next page, page 29, in Figure 16.

09:35:41 24 Here, I'm seeing a crossover range in these contests
09:35:45 25 from between 10 to 13.4. Is my read correct?

09:35:56 1 A. That looks right.

09:35:58 2 Q. So is it fair to say for the 2022 contests, Senate
09:36:03 3 District 1 and 2 have higher crossover voting percentages
09:36:08 4 than the demonstration region?

09:36:12 5 A. Yes.

09:36:15 6 Q. Okay. Let's move on to the 2020 elections. This is
09:36:19 7 on page 31, Figure 18.

09:36:31 8 A. I think you can understand why I opted for the
09:36:34 9 coefficient plots to display my initial set of findings.

09:36:49 10 Q. So here I'm seeing a crossover range for SD1 and SD2
09:36:58 11 for between 12.6 and 22.6. Do you see that, too?

09:37:11 12 A. Yeah, that -- yeah, when you look at the two -- two
09:37:15 13 together, obviously it's going to be -- within each
09:37:20 14 district, it's going to be, you know, more specific. But
09:37:24 15 the two districts taken as a whole, that sounds right.

09:37:28 16 Q. Okay. And it appears that SD1 has higher crossover
09:37:32 17 voting than SD2. Is that a fair read of these charts?

09:37:36 18 A. Yes. On average, that's certainly the case.

09:37:39 19 Q. Okay. Okay. Let's go to see how the demonstration
09:37:43 20 region fares in the 2020 election. This is on page 32,
09:37:49 21 Figure 19.

09:37:55 22 So my read of this chart shows that there are -- the
09:37:59 23 crossover voting in the demonstration region for the 2022
09:38:05 24 elections contests ranges from 8.9 to 18. Do you see that?

09:38:14 25 A. Yes.

09:38:17 1 Q. So is it fair to say that for 2020, there's some
09:38:20 2 overlap, but overall on average SD1 and SD2 have higher
09:38:26 3 crossover than the demonstration region?

09:38:31 4 A. Yes. That's right.

09:38:33 5 Q. Okay. Let's look at the 2018 election results.
09:38:39 6 Starting on page 36, Figure 23.

09:39:06 7 So here, Dr. Collingwood, I'm seeing a crossover range
09:39:11 8 in the 2018 SD1 and SD2 contest analysis as ranging from
09:39:18 9 between 20.4 and 26.2. Is that your read, too?

09:39:31 10 A. I think so. Yes.

09:39:32 11 Q. Okay. So let's see how the demonstration region fared
09:39:36 12 with the 2018 elections. That's on page 38, Figure 25.

09:39:48 13 This shows a crossover range between 16 and 18.3
09:39:53 14 percentage points; is that right?

09:40:08 15 A. You said 16 to 18.3?

09:40:11 16 Q. Yes.

09:40:11 17 A. That sounds right.

09:40:13 18 Q. Okay. So for the 2018 contest, SD1 and SD2 have
09:40:18 19 higher crossover voting; correct?

09:40:22 20 A. Yes.

09:40:24 21 Q. Okay. Let's turn to the 2016 elections. This is on
09:40:29 22 page 40 of your report, Figure 27.

09:40:53 23 So on this page, the 2016 SD1 and SD2 analysis shows a
09:41:01 24 crossover range in these contests between 18 to 43
09:41:07 25 percentage points. Do you see that?

09:41:19 1 A. I think that might just be for SD2.

09:41:21 2 Q. Okay. And in SD1, I'm seeing a crossover range as
09:41:26 3 high as 51.6; is that right?

09:41:28 4 A. Yes. That's the -- the one -- the one contest that
09:41:34 5 did not have racially polarized voting.

09:41:37 6 Q. Okay. So for the record, the 2016 contests in SD1 and
09:41:44 7 SD2 showed a crossover range of 18 to 51.8 percent; is that
09:41:51 8 right?

09:41:54 9 A. That sounds about right.

09:41:55 10 Q. Okay. So let's look at the demonstration region.

09:42:01 11 Page 41.

09:42:05 12 When you looked at the 2016 elections in the
09:42:08 13 demonstration region, your analysis showed crossover ranges
09:42:13 14 from between 13.9 percent and 43.46 percent. Do you see
09:42:20 15 that?

09:42:34 16 A. That looks about right.

09:42:36 17 Q. Okay. And so for the 2016 contest, is it fair to say
09:42:40 18 that while there's some overlap of the ranges, SD1 and SD2
09:42:45 19 had, on average, higher crossover voting than the
09:42:49 20 demonstration districts?

09:42:52 21 A. Yes.

09:42:53 22 Q. Okay. So yesterday you discussed --

09:42:58 23 MS. McKNIGHT: We can leave this up for a minute.

09:43:00 24 Q. Yesterday, you discussed the 2016 election involving
09:43:03 25 Morgan and Edmunds in the State Supreme Court. Do you

1 remember that discussion?

2 A. Yes.

3 Q. Okay. And you see it here on this table. It's
4 reported elsewhere in your report. But here you see it on
5 the table, three up from the bottom. Do you see that?

6 A. Yes.

7 Q. And this was a nonpartisan race; correct?

8 A. That's right.

9 Q. Okay. I understood your testimony yesterday to be
10 that you performed a surname analysis and determined that
11 the last names of these candidates did not reveal the
12 racial identity of either candidate. Did I understand
13 correctly?

14 A. Those two candidates have something like around the
15 neighborhood of 80 to 85 percent White and maybe 14 to
16 17 percent Black or so, in terms of if you look at the 2010
17 surname census tabulation of names by race. And so while,
18 of course, you can meet someone who is Black with the name
19 Morgan and Edmunds -- and certainly there are people with
20 those surnames who are African-American. Those names are
21 typically affiliated with Whites, in America, right? So
22 it's one of those names that is not especially revealing
23 with regards to their race. And in low-information
24 contests, sometimes when we're looking at racial politics,
25 names can give a voter a cue. And we don't have that here

1 so readily.

2 When I put those numbers out there for the name

3 distributions, that's off the top of my head. So I could

4 be off slightly.

5 Q. Do you remember testifying about this issue yesterday?

6 A. You know, a lot was discussed yesterday. And -- I

7 mean, I do remember discussing this and that there was some

8 objection on your behalf about it.

9 Q. Do you remember testifying yesterday that the names

10 Morgan and Edmunds could go either way?

11 A. That sounds right.

12 Q. Okay. That's different, in my understanding, than

13 your testimony here today where you say that there's an

14 85 percent correlation with it being White and a 15 percent

15 correlation with it being Black.

16 A. Well -- okay. Let me re -- when I say "correlation,"

17 what I'm saying is that of all Morgans or Edmundses in the

18 United States, if you just randomly came across one of

19 them, you have about an 85 percent chance that that person

20 would be White or -- you know, 80 or 85 percent that that

21 person would be White. But because in America, I think the

22 Black population is about 12 percent, that actually means

23 that Black people disproportionately are more likely to

24 have Morgan or Edmunds than, like, other names, because

25 that percentage is actually higher than their share of the

1 total population.

2 So it's not -- when I say "either way," what I'm
3 saying is that you can't, like -- well, put it this way:
4 If you hear the name Collingwood, first of all, you say
5 that sounds like a British name. Maybe there's a Lord
6 Collingwood somewhere, you might think. And 92 or
7 93 percent of Collingwoods in the United States are White.
8 So, like -- so that sends a power -- if you just hear
9 "Collingwood," you probably think that person is White.
10 When you hear "Morgan" and "Edmunds," for those of us who
11 kind of think about surnames, it doesn't carry as much,
12 like, yeah, that person is White guaranteed. So it's just
13 a little bit more up in the air for your average person, is
14 what I would say.

15 Q. Let's pull up PX 128 at page 4.

16 Dr. Collingwood, I'm going to ask you to look at the
17 third paragraph down on this page, but I would also like to
18 ask you questions overall about your reports. Your
19 discussion of a surname analysis, is that located in the
20 third paragraph down of this rebuttal report on page 4?

21 A. Yes.

22 Q. Okay. And just so we can cabin this in, do you
23 discuss your surname analysis in any other reports or any
24 other sections in your reports in this case?

25 A. I can't recall off the top of my head. I would have

1 to, you know, review everything.

2 Q. I see. So let's focus in on the fourth sentence down
3 in the paragraph that starts out, "Dr. Alford also points."
4 I'm going to read it to you. Let me know if I get any of
5 it wrong.

6 Quote, "The two candidate surnames are not especially
7 racially distinctive from one another. Both Black and
8 White folks might realistically have either of those
9 names." Do you see that?

10 A. Yes.

11 Q. Okay. Anywhere in this paragraph do you report
12 figures that you just described in your testimony of
13 84 percent affiliation with White or 14 percent affiliation
14 with Black?

15 A. No. Those are just -- because of the nature of some
16 of my research, I walk around in my brain as a weirdo with
17 race probability distributions of people's names.

18 Q. Okay. Did you report those figures anywhere in your
19 report or backup for your report?

20 A. I don't believe so.

21 Q. Okay.

22 MS. McKNIGHT: Your Honor, I'm going to move to
23 strike his testimony about figures of 84 and 14 percent, or
24 figures thereabout, because they were not in his report and
25 he's testified they're not in his backup of his report.

1 Quite the opposite. His report shows that these names
2 might realistically have either of those names, that they
3 might be either.

4 MS. THEODORE: May I respond, Your Honor?

5 THE COURT: You may.

6 MS. THEODORE: Thanks. His testimony on direct
7 was completely consistent with what he said in his report
8 as is the figures that he gave, which is that Black and
9 White -- Black and White people might realistically have
10 either of those names, and he gave that -- those numbers in
11 response to a question on cross-examination. And if
12 counsel didn't want to know the answer, she shouldn't have
13 asked the question.

14 MS. McKNIGHT: Your Honor, may I respond, or do
15 you need --

16 THE COURT: You may.

17 MS. McKNIGHT: Okay. Dr. Collingwood's testimony
18 yesterday was consistent with the information in his
19 report. Dr. Collingwood's testimony today is inconsistent
20 with the information in his report because he's suggesting
21 that there's an 84 percent relationship between these names
22 and White and a 14 percent relationship with White -- with
23 Black. That is not a realistic equality of either of these
24 names could either be Black or White. And those numbers,
25 more importantly, were never reported anywhere.

09:51:50 1 THE COURT: Well, I'm not going to grant the
09:51:53 2 motion to strike. I think you've impeached his credibility
09:51:56 3 sufficiently this morning that I'll leave it at that.

09:52:00 4 MS. McKNIGHT: Thank you, Your Honor.

09:52:08 5 Q. So staying on this page, you provided an opinion in
09:52:12 6 this matter that both Black and White folks might
09:52:16 7 realistically have either of these names; correct?

09:52:19 8 A. Yes.

09:52:20 9 Q. Okay. And you concluded in your report that voters
09:52:28 10 did not have a racial cue when they voted in this election;
09:52:52 11 correct?

09:52:52 12 A. Where does it say that?

09:52:56 13 Q. Well, let me ask you this way: Do you believe that
09:52:59 14 voters had a racial cue based on the last names of the
09:53:04 15 candidates?

09:53:06 16 A. It would be muddled.

09:53:07 17 Q. Okay. Would you agree with me that there are at least
09:53:13 18 two conclusions you could draw from this, either voters did
09:53:17 19 not notice that the candidate Morgan was Black and so
09:53:21 20 didn't make a decision based on that, or they simply didn't
09:53:26 21 care about the race of Candidate Morgan?

09:53:35 22 A. I think with low -- with down-ballot contests, it's
09:53:38 23 probably common for voters not to know the race of the
09:53:41 24 candidates. I can't say that for sure, but I think that
09:53:47 25 that does occur with down-ballot contests. And what was

1 the second point?

2 Q. Sure. The second potential conclusion: Is it
3 possible that voters simply didn't care about the race of
4 Candidate Morgan?

5 A. Well, actually, I think like the -- I think it's this
6 analysis has demonstrated -- and I think Dr. Alford has
7 also demonstrated it -- that the individual level race of
8 the candidate themselves in many contests is not as
9 important as the typical association of how these voters
10 are voting, which is they're voting for candidates that are
11 typically taking policy positions that they're going to
12 prefer.

13 And often those policy positions are heuristic, is the
14 partisan affiliation of the candidate that is telling
15 voters how that candidate is likely to perform on policy
16 issues related to race. And so when that is taken away in
17 this particular context, the race of the candidate, if they
18 know, they can certainly use that as a cue. And I think to
19 that degree we do see Black voters still voting fairly
20 cohesively. Obviously, not to the same degree as what we
21 would observe in some of these other contests. But Black
22 voters are still voting fairly cohesively for this
23 candidate and more so than White voters are voting for this
24 candidate.

25 Q. I see. So it's possible that some voters simply

1 didn't care about the race of Candidate Morgan; isn't that
2 right?

3 A. Well, I think some -- many voters -- yeah. Sure. I
4 mean, many voters are strictly looking at policy positions
5 or typical habits that they're voting in sometimes.

6 Q. Okay. Stepping back, we discussed a little earlier
7 today that there was more crossover voting in SD1 and SD2
8 than in the demonstration districts; correct?

9 A. Yes.

10 Q. Okay. And you believe that SD1 and SD2 are in a
11 similar area as the demonstration districts; correct?

12 A. Yes. They're in the broader region.

13 Q. Okay. And you would agree that crossover voting
14 varies even in the same -- even within a same region?

15 A. Yeah. I mean, crossover voting occurs differently in
16 different places. Different race.

17 Q. Okay. And now let's pull up on page 29 of your report
18 and page 32 of your report.

19 On page 29, we have racially polarized voting in the
20 2022 contests for demonstration district county area;
21 correct?

22 A. Yes.

23 Q. And Figure 19 on page 32, we have racially polarized
24 voting 2020 contests, demonstration district county area;
25 correct?

09:57:49 1 A. Yes.

09:57:51 2 Q. And I'm going to start asking you questions about your
09:57:54 3 BVAP analysis in this case -- BVAP-needed-to-win analysis.
09:57:59 4 And before we get there, I wanted to make sure we
09:58:01 5 understood that your racially polarized voting analysis
09:58:04 6 that is illustrated here in Figure 16 and 19 are the
09:58:09 7 racially polarized voting analyses that informed your BVAP
09:58:13 8 analysis; is that right?

09:58:15 9 A. Yes. The same code base that is used to conduct the
09:58:21 10 BVAP analysis is used to conduct the -- when, you know --
09:58:28 11 so what I'm doing is I'm running a racially polarized
09:58:32 12 voting analysis in the context of doing the BVAP analysis,
09:58:35 13 and it's the same one as these. So, yes.

09:58:38 14 Q. Thank you.

09:58:42 15 Let's turn to pages 23 through 25 of your report.
09:58:54 16 This is your section of your -- called -- titled, "BVAP
09:58:58 17 analysis"; correct?

09:59:12 18 A. Yes.

09:59:16 19 Q. Now, you described yesterday how you performed this
09:59:19 20 BVAP analysis. And I'll get into some more questions about
09:59:22 21 how you did it. But at the outset, could I ask you: This
09:59:26 22 is considered a simulation analysis; is that right? You
09:59:30 23 conducted a simulation?

09:59:33 24 A. Yes. The simulation is I am conducting this analysis
09:59:38 25 at each theoretical level of Black voting population from

09:59:44 1 one to a hundred by one.

09:59:49 2 Q. So this BVAP simulation analysis that you conducted
09:59:53 3 and report on in pages 23 through 25 of your report, has
09:59:59 4 this type of simulation analysis ever been accepted by a
10:00:06 5 court?

10:00:15 6 A. I haven't done this in another court context, if
10:00:19 7 that's what you're asking. I've done it in many reports,
10:00:23 8 but -- so I don't know if other courts have accepted it.
10:00:26 9 I'm sure they have. It's a fairly common approach.

10:00:29 10 Q. The BVAP simulation analysis to determine BVAP
10:00:33 11 necessary to win?

10:00:34 12 A. Or some sort of BVAP analysis that one conducts in
10:00:39 13 order to, you know, calculate a BVAP threshold -- BVAP
10:00:45 14 threshold analysis.

10:00:46 15 Q. I understand.

10:00:47 16 So I understand that, in the world, there is a BVAP
10:00:49 17 threshold analysis. I would like to ask these questions
10:00:53 18 specifically focused on your BVAP simulation analysis.
10:00:56 19 Okay?

10:00:57 20 A. Well, it's the same -- it's the same analysis. In
10:01:01 21 order to get to the threshold, you need to figure out what
10:01:05 22 the BVAP would do. So while you're conducting the
10:01:11 23 analysis, that's what you're doing, is you are basically
10:01:16 24 rotating up the BVAP at different levels and then figuring
10:01:20 25 out at what point does the Black-preferred candidate win by

1 slightly more than 50 percent. So it's a threshold
2 analysis.

3 Q. Okay. And so you've never submitted your form of this
4 analysis to any court before; is that right?

5 A. I would have to think about it. Typically what I do
6 do is I do -- since the, you know, map has already been
7 drawn, and I look at the existing map and then I look at a
8 demonstration district in order to do some sort of
9 performance analysis, this is in line with what we might
10 think of as a performance analysis, that same general area.
11 So -- but off the top of my head, I can't think of one.

12 Q. Okay. And you would agree with me that performance
13 analyses on the one hand and BVAP-necessary-to-win analyses
14 on the other are different types of analyses; right?

15 A. Yeah. I mean, they're -- yeah, they're -- you know,
16 you're dealing often with the same kind of general data.
17 But they're -- they're different analyses to getting at a
18 similar question.

19 Q. Okay. And, now, your analysis here -- your analysis
20 here is a regionwide analysis; correct? You look to find
21 at what point in a particular election contest in this full
22 demonstration district region a Black-preferred candidate
23 would win?

24 A. That's right.

25 Q. And you did not conduct a district-specific functional

1 analysis in this case; correct?

2 A. Sorry. What do you mean by "in this case"? Like,
3 this court case?

4 Q. Yes.

5 A. I don't think that's correct.

6 Q. Is that because you think your performance analysis
7 counts as a district-specific functional analysis?

8 A. Some people would -- you know, people use these terms
9 differently in different places.

10 Q. I see.

11 Now, I have a question specific to your BVAP analysis
12 in this case. Do you view your BVAP analysis in this case
13 as being district specific?

14 A. This is a regionwide, 12-county analysis, to say in
15 this broader region where we could draw a Black-performing
16 district or an equal opportunity district, not sending
17 specifics on the exact boundaries of the district that
18 would be drawn in this broader region, what would the BVAP
19 be that would basically create an equal opportunity
20 district.

21 Q. Okay. So you did not calculate the percent needed to
22 elect a Black-preferred candidate at any district level;
23 right?

24 A. No. No.

25 Q. And you also did not do that at the county level;

1 correct?

2 A. No, I did not do that.

3 Q. And when you conducted this BVAP analysis, you did not
4 include both statewide and state legislative contests in
5 your analysis; right?

6 A. That's correct.

7 Q. You just looked at statewide; correct?

8 A. Yes.

9 Q. Okay. And you only looked at two election years;
10 correct?

11 A. Yes.

12 Q. Okay. And you would agree with me that the Black
13 percentage needed to win will vary across both the grouping
14 and the contests considered; right?

15 A. Repeat that.

16 Q. Sure. Would you agree with me that a Black percentage
17 needed to win will vary across both the grouping of the
18 geography of voters and the contests -- the election
19 contests considered?

20 A. I think that's a fair statement.

21 Q. So Dr. Alford -- I mean, Dr. Collingwood. Pardon me.

22 A. Sorry, we have a similar look.

23 Q. Are you familiar with other BVAP-needed-to-win
24 analyses that have been submitted in cases in North
25 Carolina?

1 A. No.

2 Q. Okay. Let's pull up Exhibit 4 from your deposition.

3 MS. McKNIGHT: Actually, before you do that,

4 Mr. Williamson, you can bring it down.

5 Q. Would you agree with me, Dr. Collingwood, that because
6 the Black percentage needed to win varies within groupings,
7 that makes it important to conduct a district-specific
8 analysis?

9 A. No, I wouldn't agree with that.

10 Q. Okay. And do you know who Dr. Lisa Handley is?

11 A. Yes.

12 Q. And are you familiar with her work?

13 A. A bit.

14 Q. And she performs racially polarized voting analyses,
15 and she has done in a number of redistricting cases. Is
16 that your understanding?

17 A. Yes.

18 Q. So let's pull up Exhibit 4 from your deposition.

19 MS. THEODORE: Your Honor, I would like to lodge
20 an objection.

21 THE COURT: And what's the objection?

22 MS. THEODORE: The objection is that Exhibit 4 is
23 an expert report by another expert in a different case who
24 isn't testifying here today. This analysis hasn't been
25 disclosed. It's not Dr. Collingwood's prior statement.

1 It's hearsay, and it's not appropriate to bring up in this
2 case for those reasons.

3 MS. McKNIGHT: May I, Your Honor?

4 THE COURT: You may.

5 MS. McKNIGHT: Okay. As you'll see on the face of
6 this document in the footer, it indicates this document was
7 filed in this case, case 4:23-CV-193. It was filed on
8 November 22nd, '23, by plaintiff's counsel in this matter.
9 It includes a type of BVAP-needed-to-win performance
10 analysis. And I would like to ask questions of plaintiff's
11 current expert about inconsistencies between his position
12 here and the report that was filed by plaintiff's counsel
13 in this case.

14 MS. THEODORE: May I respond to that, Your Honor?

15 THE COURT: You may.

16 MS. THEODORE: We filed this at the preliminary
17 injunction stage to rebut statements in the preliminary
18 injunction stage by the legislative defendants about this
19 analysis to show that they were, you know, incorrectly
20 describing this analysis. We haven't filed this. They
21 haven't presented this or disclosed this as expert opinion
22 for purposes of the merits of this case. And we haven't
23 disclosed this as expert opinion for the merits of this
24 case.

25 THE COURT: The objection is overruled. It's

1 permissible impeachment.

2 You may proceed.

3 MS. McKNIGHT: Thank you, Your Honor.

4 Q. Let's turn to page 2 of this exhibit.

5 Dr. Collingwood, do you see that this is titled,
6 "Providing Black voters with an opportunity to elect
7 candidates of choice to the North Carolina State
8 Legislature: A jurisdiction-specific functional analysis
9 of select House and Senate county grouping"? Would you
10 agree that's what it is, Dr. Collingwood?

11 A. That's what it says. Yeah.

12 Q. And it was prepared by Lisa Handley. Do you see that?

13 A. Yeah.

14 Q. And it's dated September 17, 2019. Do you see that?

15 A. Yeah.

16 Q. Let's turn to Table 19A of this report. Page 36,
17 pardon me.

18 Dr. Collingwood, this is an example of the analysis
19 that Dr. Handley performed in this case. I have some
20 general questions for you about this table. Do you see
21 that this table calculates the percent Black-preferred
22 would have -- candidate would have received if the district
23 was 50 percent BVAP, 45 percent BVAP, 40 percent BVAP, and
24 35 percent BVAP?

25 A. Yeah, I think so.

1 Q. Okay. And do you see that this is focused on a
2 specific county grouping, Franklin and Wake?

3 A. Yes.

4 Q. And do you see that it is for four election cycles?

5 A. Yes.

6 Q. And do you see that the elections considered include
7 both statewide and legislative?

8 A. Looks like it.

9 Q. And now when you conducted this analysis, you did not
10 consider four election years worth of contests, did you?

11 A. No. I did two.

12 Q. Okay. And you did not consider state and -- state and
13 -- pardon me. And you did not consider state legislative
14 contests in your analysis, did you?

15 A. Yes. Incorporating state contests into a 12-county
16 region in a district that hasn't yet been theoretically
17 drawn wouldn't make sense. Someone wouldn't do that.
18 Whatever she is doing here is different than that. Maybe
19 this is -- you know, I haven't read this document. If
20 you're looking at a full county, you know what the BVAP is
21 of that full county, so you wouldn't be able to simulate a
22 change in BVAP there; you know what that actually is. If
23 that makes sense.

24 Q. Okay. So Dr. Handley studied endogenous elections in
25 her analysis but you did not study them in yours; correct?

1 A. Right. Because -- well, again, I don't actually
2 know -- it looks like she's incorporating that information
3 in these different state houses that may or may not fully
4 cover the area where a new district would be drawn. I just
5 don't know, you know, what she's doing. So I can't really
6 speak to what she's doing.

7 Q. Okay. So I understand your point, that we know what
8 the BVAP is of a certain county, but you didn't calculate
9 the percent of vote a Black-preferred candidate would have
10 received if a district drawn with that county and any other
11 part was at 50 percent BVAP or any other percent BVAP;
12 right?

13 A. I'm not -- could you restate the question?

14 Q. Sure. I understood your testimony earlier to say that
15 we know what level of BVAP a county is, so we don't need to
16 conduct this type of analysis on it. Did I understand that
17 correctly?

18 A. It wouldn't make sense because you can't have -- you
19 can't have a county and then say -- because these all say
20 Wake. And again, I don't know the exact composition of
21 what these districts do or don't look like, so I can only
22 speak in generality. But if you have a county set at --
23 you know what the BVAP is -- say it's 50 percent -- you
24 can't, like, do a simulation and say, "Well, if this county
25 was actually 45 percent," or 35 percent, because that's not

1 possible. Whereas, in a broader region, even though you
2 may know a 12 county -- you may know what the BVAP is in
3 the overall region, you could theoretically draw a district
4 in that region that has range to it. Right? And that's
5 why using a broader regional analysis makes sense.

6 Q. Okay. So you're saying it's not possible to study a
7 county and understand how it -- would perform at different
8 BVAP levels. Did I understand you correctly?

9 A. Well, you wouldn't be, like, basically rotating the
10 BVAP because it's -- the BVAP is set.

11 Q. I see.

12 But isn't that what Dr. Handley is doing in Table 19A?
13 She has counties Franklin and Wake, and she is able to
14 assess the percent of vote Black-preferred candidate would
15 have received at varying levels of BVAP?

16 A. I just don't know what Dr. Handley is doing here. I
17 would have to talk to her about her strategy and her
18 approach. What I can tell you is that we're fundamentally
19 doing something similar, which is that we're incorporating
20 voter turnout by race and we're including estimates from
21 racially polarized voting analyses. That is the basis of
22 any sort of threshold analysis that one is going to do.
23 Maybe there's some differences in techniques and certain
24 ways of doing it over here versus doing it over there. But
25 that's the fundamental approach that all of us who do those

1 type of threshold analysis, whether you call it a
2 simulation or a threshold analysis, that's what we're
3 doing.

4 Q. Okay. So Dr. Handley, on the one hand, in these
5 columns, she refers to percent BVAP a candidate would have
6 received if a district was drawn at different levels of
7 BVAP. She's referring to districts at levels of BVAP, but
8 you did not conduct a district-specific analysis; correct?

9 A. Well, she may not be conducting a district-specific
10 analysis either. What she may be doing is saying, "Here's
11 Wake County. We can draw four districts." And so because
12 I know you can draw districts that are 50 percent in Wake
13 County, you can draw districts that are 37 percent BVAP in
14 Wake County or whatever, that's probably what she is doing.
15 I don't know. But that's my suspicion.

16 And so she's taking, effectively, the exact same
17 approach I am, which is a broader region. And then you are
18 basically saying, okay, if we drew a couple of districts
19 here, what would it look like? So that's my suspicion. I
20 don't know that for sure. And so in that -- if that's the
21 case, then we're basically doing the same thing.

22 Q. I see.

23 And so then you could have run your analysis --
24 instead of on that broader regional level, you could have
25 run it on -- at a district-specific level; correct?

1 A. No. What I'm trying to say is that just looking at
2 this table, it appears that Wake County has several
3 different state Senate and House districts here. And so
4 what she may be doing is saying, "Okay. Overall, I know
5 BVAP in the county is X. And so if I simulate, you know,
6 what the BVAP would be, this is what a district, you know,
7 might look like in terms of performance for the
8 Black-preferred candidate." But again, I just don't know
9 what she's doing.

10 Q. I see.

11 A. And the reason I say that is because any district,
12 once you have it set in stone, the BVAP is fixed. The BVAP
13 is fixed so you know exactly what the performance is going
14 to be. You -- and you -- once you have a district set in
15 stone, you cannot rotate it and say, well, let's just
16 imagine if this district which we actually know is true,
17 what would it -- how would the vote change if the BVAP went
18 up or down? You can't do that. It has to be in a region
19 that's broader, where a district could theoretically be
20 drawn. And that way, when you say, well, in this case it's
21 47 and in this case it's 58 BVAP required for the
22 Black-performing candidate to win, that's a realistic
23 scenario. You could draw 47. You could draw 52. But once
24 it's fixed, you know what the BVAP is. And so you just
25 can't say that, well, we know the BVAP here is 47 but if we

1 shifted it down to 39, what would it be? You could
2 actually make that calculation, but one wouldn't do that
3 because you actually know what the BVAP is there in that
4 particular case.

5 Q. I see.

6 So you also have the factors of crossover voting --
7 correct? -- involved in this analysis?

8 A. Yes. So what you do is you basically -- you have your
9 racially polarized voting results, and so you take,
10 basically, the Black vote for Candidate A, but because
11 there's crossover voting for Candidate B -- sorry.
12 Because, let's say, White voters are crossing over also for
13 Candidate A, so 15, 20 percent, 11 percent, you're
14 combining those together with the Black voters for
15 Candidate A to figure out what Candidate A's vote is. And
16 then the same thing, because some Black voters, albeit not
17 a lot in this analysis, are voting for the White-preferred
18 candidate. So you're taking all of that into account, of
19 course, when you're determining what the -- how well the
20 Black-preferred candidate is going to do.

21 Q. Understood. So you have crossover voting information,
22 you also have turnout information; correct?

23 A. That's correct.

24 Q. And then you have different election contests;
25 correct?

1 A. That's correct.

2 Q. So even if you have a set district with a set BVAP
3 with the information of crossover voting, election results,
4 turnout numbers, you can determine where in a BVAP range
5 that district would turn from a performing district to a
6 nonperforming district; right?

7 A. No. That wouldn't make sense because that district is
8 already set at the BVAP. And so in that case, all that you
9 would do is you would do a performance analysis, which is
10 basically what I do a lot of the time in a lot of the plots
11 we've looked at already. Those are looking at set
12 districts. We already know what they are. We know what
13 the BVAP is. We know what the BCVAP is, and then we see if
14 they perform.

15 Q. I see.

16 So is it your opinion that you would not use
17 information from crossover voting turnout election contests
18 to be able to determine the tipping point from when a
19 district would move from performing to nonperforming?

20 A. The performance analysis effectively takes all of that
21 information into account through the racially polarized
22 voting analysis when you do a *Gingles* II analysis, is
23 you're incorporating voter turnout. Because we have voter
24 turnout by race in the state of North Carolina. So you're
25 incorporating voter turnout sort of intuitively into the

1 model and you're conducting the racially polarized voting.
2 And so you know how Black voters are voting, how White
3 voters are voting for the Black-preferred candidate,
4 et cetera. And so you instinctually, basically
5 intuitively, know, if you did -- if you didn't have that
6 racially polarized voting level -- or amount of
7 information, you wouldn't know who the Black-performing and
8 White-performing candidates are, so you -- the performance
9 analysis would -- you could assume, you know, who they
10 would be but you don't know that for sure. And so you have
11 to do that before you then conduct the performance
12 analysis.

13 Q. So your analysis does not tell us at what level BVAP a
14 specific district like SD1 or SD2 would need in order to
15 perform; right?

16 A. Again, SD1 is already drawn. It's already drawn. We
17 know what the BVAP is, and we know that it does not
18 perform. I think maybe if we redrew SD1 and we said let's
19 go ahead and redraw SD1 in the area where SD1 would
20 theoretically be located, what you would do is you would
21 basically do what this demonstration district analysis is
22 that I did. Is that you would basically -- let's take the
23 areas where SD1 could be drawn and conduct some sort of
24 threshold analysis. Because we know this broader area, we
25 can draw a 47 percent BVAP district here. We can draw a

1 46, a 45, a 42, a 50, a 51. We can do all of that in that
2 general area. It's not SD1 as currently enacted, but it
3 would be given a value of one -- i.e., it would be called
4 SD1.

5 Q. Dr. Collingwood, why couldn't you set -- for any given
6 district -- let's use SD1 as an example. You know the
7 turnout rates in SD1 for a particular election; right?

8 A. I mean, I can calculate that. I don't have it off the
9 top of my head.

10 Q. Okay. And then you also have the election results for
11 SD1; is that right?

12 A. That's right.

13 Q. Okay. Why couldn't you perform an analysis using the
14 turnout rates and the election results to determine when --
15 at what level of BVAP in SD1 you would no longer have a
16 Black-preferred candidate winning?

17 A. I'm not really quite sure how to continue to explain
18 this. You cannot -- you have a fixed Black voting age
19 population in SD1. And so you cannot make it go lower and
20 say, oh, if SD1 were two points Black higher, now I conduct
21 my turnout analysis and I conduct my racially polarized
22 voting and I say now they win. We just -- we can't do
23 that. It's fixed.

24 Q. Thank you, Dr. Collingwood.

25 Let's pull up the conclusion -- let me -- yeah, I

1 think -- I think we're fine on this point. Let's pull up
2 the conclusion of this report at page 13.

3 I would like to ask you a summary question and see if
4 you agree. So this would be on page -- pardon me, page 14.

5 I'm sorry. One page prior. Page 14 out of 51.

6 So, Dr. Collingwood, here is Dr. Handley's conclusion
7 paragraph. Do you see that? I would like to ask you about
8 something she says here and whether you agree.

9 Do you see the paragraph, "Conclusion"?

10 A. Yeah.

11 Q. Do you want to take a minute to read it?

12 A. Yeah.

13 (Pause.)

14 A. Yeah, it looks like she's doing exactly what I'm
15 doing.

16 Q. Okay. So the second sentence, when she says, "When
17 the election contest was polarized, I used the estimates of
18 Black and White turnout and Black and White votes for the
19 Black-preferred candidate to calculate the percent BVAP
20 required for Black voters to elect their preferred
21 candidate in that election." Do you see that?

22 A. I do. Yeah.

23 Q. Okay. In the next sentence, she says, "The Black
24 percentage needed varies both by grouping -- hence, the
25 importance of conducting a district-specific analysis --

1 and the contest considered." Do you see that?

2 A. Yes.

3 Q. Okay. Do you agree with that?

4 A. Well, I don't know exactly what she's doing because I
5 don't know her -- she's doing some sort of county grouping,
6 okay? Which means that she's got a broader county region.
7 This is presumably for -- I don't know if this is for
8 something related to, you know, a court case that was going
9 on or this is related to the next round of redistricting.
10 My suspicion it's related to the next round of
11 redistricting, because it's quite common for people like
12 Dr. Handley and me to be hired by either a state or some
13 sort of interested party to conduct these types of analyses
14 prior to redistricting. And so what she's probably doing
15 is she's looking at a broader county grouping where those
16 groupings are -- you know, we know right now that here's
17 where these contests are and these -- you know, these
18 districts are located in this broader county grouping kind
19 of to the right, to the left, to the north, to the south.
20 You know, when you work in this area, you know that people
21 tend to refer to this area as Senate District 2 and Senate
22 District 1 and things like that.

23 So, you know, so I can't really speak to that
24 specifically. But in terms of the broader county
25 groupings, that sounds to be very comparable to what I'm

1 doing. I'm actually using known voter turnout as opposed
2 to, you know, estimating it.

3 So -- I mean, there's always going to be some sort of
4 error in the sense that when you're using any type of
5 data -- you know, even a U.S. Census, you don't have a
6 100 percent calculation of all of the households because
7 someone may not answer the door or whatever. But I'm not
8 estimating voter turnout. She's probably estimating it
9 using ecological inference, which is going to actually
10 create more noise than what I did.

11 Q. So I understand that you conducted your BVAP analysis
12 on an area with a larger population base than any
13 individual district; is that right?

14 A. That's right.

15 Q. Okay. So this means you looked at counties that were
16 not included in every demonstration district; correct?

17 A. Yes. The -- the decision was to include counties that
18 are in at least one of the demonstration districts. So I
19 can give a broader area knowing that, you know, the kind of
20 threshold areas BVAP that we're sort of dealing with would
21 be a realistic possibility.

22 Q. And you conducted this -- let me step back. You have
23 two types of analyses in your case as we discussed
24 yesterday. You have your performance analysis and then
25 your BVAP analysis; correct?

1 A. Yeah. They're both getting at sort of the same
2 dynamics.

3 Q. Okay. And in the performance analysis, you looked at
4 four election years; correct?

5 A. That's right.

6 Q. But in your BVAP analysis, you halved that down to two
7 years of election results; correct?

8 A. Yeah, that's right.

9 Q. Okay. Let's turn to page 25 of your report. This is
10 Table 13 related to your BVAP analysis.

11 Table 13 is titled, "BVAP simulation analysis, all
12 2020 to 2022 contests." Do you see that?

13 A. Yes.

14 Q. Okay. What's illustrated on this page is a histogram
15 demonstrating the results of your analysis. Is that a fair
16 description?

17 A. That's it.

18 Q. And the histogram shows the estimated Black VAP
19 required in a particular contest for the Black-preferred
20 candidate to win; is that right?

21 A. That's right.

22 Q. Okay. Now the numbers are not reported here on the
23 chart, but they are in your backup data, so we can try to
24 discern from the lines here on this page the level of each
25 bar. So I would like to walk through the bars.

1 Let's start on the left. The first bar -- well, let
2 me orient a little bit better. You have percent Black VAP
3 needed to narrowly achieve 50 percent plus one on the
4 bottom; is that right?

5 A. That's right.

6 Q. Okay. And then the other axis, you have "count";
7 right?

8 A. Correct.

9 Q. And "count" means number of elections; correct?

10 A. Correct.

11 Q. Okay. So starting on the left, the first bar shows
12 two elections in this region would need less than
13 42.5 percent BVAP to guarantee victory; correct?

14 A. That's -- I did a -- I went and re-looked at this.
15 That is 42 and 43, and then it goes 44, 45; 46, 47; 48, 49;
16 50, 51; 52, 53. The histograms in R are typically, you
17 know, default. You know, you have some ggplot code and you
18 plot it out. And so the axes are just kind of default
19 labeled the way that they're labeled in terms of the
20 numbers and the ticks and things like that. But that's the
21 distribution.

22 Q. That's helpful, Dr. Collingwood.

23 So let me just make sure we understand that the
24 first -- there's a white line -- a vertical line. The very
25 first white vertical line, what value does that indicate?

1 A. The first -- the two on the left are the number of
2 contests. So there's two contests, where, in order for the
3 Black-preferred candidate to win in those two contests, the
4 BVAP was 42 or 43 percentage points.

5 Q. Okay. Thank you.

6 And then so each width, each span, is about 2.5. Is
7 that fair?

8 A. No. Two. It's just that the X axis, because it's a
9 default, kind of moves along. But it goes 42, 43; 44, 45.
10 So that's the -- each is two.

11 Q. Maybe I wasn't clear. Each vertical line, the space
12 between each vertical line, is a value of about
13 2.5 percent; correct?

14 A. Maybe on the plot, but the way that the actual bins
15 are the values. Yeah.

16 Q. I see. Okay. Thank you for that.

17 Okay. So let's move to the second bar. That
18 indicates that ten elections in that second bar; is that
19 right?

20 A. That's right.

21 Q. Okay. So does this mean that 12 elections in this
22 region -- meaning the first bar added up with the second
23 bar -- would need less than 45 percent BVAP to guarantee
24 victory?

25 A. Forty-five or less.

1 Q. Okay. The third bar indicates the number 7. Seven
2 elections. Is that the right read?

3 A. Correct.

4 Q. Okay. So does that mean that 19 elections in this
5 region would need 47 percent BVAP or less to guarantee
6 victory?

7 A. That is correct.

8 Q. Okay. And by the way, there are a total of 27
9 elections reported here. Is that your understanding?

10 A. That is correct.

11 Q. Okay. So 19 out of 27 elections in this region would
12 need 47 percent BVAP or lower; correct?

13 A. That is correct.

14 Q. Okay. The fourth bar is 1. So does -- is that right?

15 A. Correct.

16 Q. Okay. So does this mean that 20 elections in this
17 region would need less than 47.5 percent BVAP to guarantee
18 victory?

19 A. Say that again.

20 Q. Sure. The fourth bar is a value of 1. So is it
21 correct to say that this shows that 20 out of 27 elections
22 in this region would need 47.5 percent BVAP or lower to
23 guarantee victory?

24 A. No. That -- it would be lower than 49 percent.

25 Q. Okay. The fifth bar is 1. So this shows that 21

1 elections in this region would need 50 percent or below
2 BVAP to guarantee victory; is that right?

3 A. Say that again.

4 Q. Sure. The fifth bar is 1. So this shows that 21
5 elections in this region would need 50 percent BVAP or
6 lower to guarantee victory?

7 A. Fifty-one percent.

8 Q. Okay. So I want to make sure I understand that. Your
9 bars are quite wide and they span across -- the bar here
10 spans across the 50 percent figure. Are you saying that
11 one election, this actually means 51 instead of 49?

12 A. It -- well, it's just -- like, that could -- that one
13 contest could be either 50 or 51. That's just the way that
14 it bins out.

15 Q. But the one contest seems to span below 50. Do you
16 see that?

17 A. Well, it's -- let me explain this. Because, like,
18 when you have an X axis, it doesn't necessarily always know
19 you're going in, like, one to two, or two to three, or what
20 have you. It's just kind of -- basically, it's just a
21 default axis. And so the way that this analysis works is
22 that each BVAP is a value of 1. But the X axis doesn't
23 necessarily know that. It thinks that maybe it could be
24 1.2 or 1.3 or whatever.

25 And so what I can tell you -- and, you know, I'm happy

1 to show you in the code. But each one of these is worth a
2 value of 2. And so you start off at 42 because that's the
3 low. You go 42, 43; 44, 45; then 46, 47; 48, 49; 50, 51;
4 and then 52 and 53. It's just a ggplot default in there
5 why it might look a little bit confusing.

6 Q. So you're saying that the range for the bar above that
7 number 50 is between -- even though it spans 50 equally,
8 the range is actually 50 to 51?

9 A. That's right. Yeah.

10 Q. Okay. So this last bar on the end shows six elections
11 in this region; is that right?

12 A. That's right.

13 Q. Okay. And pardon me, Dr. Collingwood, I'm -- I --
14 from what you just described is a little differently than
15 how this reads, so I want to make sure I understand it
16 correctly. That this sixth bar shows six elections in this
17 region would need between -- is it 51 percent?

18 A. Fifty-two and fifty-three.

19 Q. Okay. Fifty-two and fifty-three percent BVAP to
20 guarantee victory; is that right?

21 A. Yes.

22 Q. And at your deposition, you did not know which
23 elections these are falling into this number 6 bucket. Do
24 you know now?

25 A. No. I don't know where all of the different elections

1 are fitting in this. The exercise is to basically take,
2 you know, the results of these 27 separate contests and to
3 show what the overall average is.

4 Q. Okay. And so this analysis does not show variation
5 across counties; correct? It only looks at results on this
6 regionwide basis?

7 A. That's right.

8 Q. Okay. So, for example, you don't know what level BVAP
9 Vance County would need as compared to a Tyrrell County?

10 A. This does not tell you that. Yes.

11 Q. Okay. And this analysis does not show variation
12 across districts; correct?

13 A. No. What this type of analysis is going to tell the
14 Court is in this general area, if you drew a district and
15 you can say, okay, here's a 47 percent BVAP district based
16 on the election results and the analysis that I've
17 conducted, you can then say, okay, if we put it 47 BVAP,
18 that's going to be a -- about as equal opportunity district
19 as you're going to get. Because you could see a lot of the
20 time the Black-preferred candidate is winning, a lot of
21 times they're losing, at 47 percent.

22 Q. And this analysis does not show variation across
23 precincts; correct?

24 A. That's correct.

25 Q. Okay. So would you agree with me that if a district

1 or precinct has higher crossover voting than its neighbor,
2 that district or precinct would need less BVAP than its
3 neighbor in order to offer an opportunity to elect?

4 A. Well, you wouldn't really be doing such a minute
5 precinct analysis with the exception of, you know, really
6 kind of at the edges potentially, if you're getting down to
7 the last, you know -- at the edges of a district or
8 something like that. That raises a whole other set of
9 questions. So you wouldn't typically think of it like
10 that, I would say.

11 Q. Okay. But would you agree with me if that one area
12 has higher crossover voting than its neighboring area, that
13 that area would need less BVAP than its neighbor in order
14 to offer an opportunity to elect?

15 A. Sorry. Say that again.

16 Q. Sure. Would you agree with me that if an area has
17 higher crossover voting than its neighbor, that area would
18 need less BVAP than its neighbor in order to offer an
19 opportunity to elect?

20 A. Yeah, that's -- that's generally true.

21 Q. Okay. I notice here on Figure 13 a reference to the
22 mean equals 47.07. Do you see that?

23 A. Yes.

24 Q. But most of the values fall below 47.07 BVAP; isn't
25 that right?

1 A. That's correct.

2 Q. Okay. So 19 out of 27 fall below 47.07 BVAP?

3 A. Yes. That's because the -- disproportionately, you're
4 taking from a general presidential election year here. So
5 in the presidential elections, the BVAP is -- Black voters
6 are voting on -- not on par, but closer to the turnout rate
7 is more similar to those of White voters in this general
8 area. And then in midterm years, the Black voter turnout
9 is, you know, lower. And so there's just more presidential
10 election years here. And so because voter turnout by race
11 is more on par in the presidential election years and
12 there's just more of those contests. That's why you see a
13 larger share falling below the 47.07 percent.

14 Q. So if that's an issue, why didn't -- and you only --
15 why didn't you consider more than one presidential year and
16 one midterm year in your BVAP analysis?

17 A. Well, I think it makes more sense to look at more
18 recent elections. And if I went back and, say, only
19 included 2018, you're now potentially offsetting where you
20 have more midterms than presidentials. And so then if you
21 decide, okay, well, that may be -- a priori isn't, you
22 know, balanced, so I'm going to go back and include 2016.
23 And so now you're getting to a point where you're as far
24 back as eight years from what the district theoretically
25 would look like in how it would perform tomorrow. And so

1 you kind of have a time issue where you're incorporating a
2 lot of contests when you're basically trying to predict
3 what the performance of this district would look like in
4 the very next election. And so because of that, you want
5 to use the most recent round of elections.

6 Q. Are you familiar with the term "mode"?

7 A. Yeah.

8 Q. Okay. And a mode is a measure of the middle point of
9 a distribution; is that right?

10 A. No.

11 Q. Okay. What is a mode?

12 A. It's the most common value, or the most common -- in
13 this case, the most common BVAP value.

14 Q. So in your view, what is a measurement of the middle
15 point of a distribution, where half the values fall above
16 and half fall below?

17 A. That's referred to as the median.

18 Q. Okay. Now, you -- did you report on the median here
19 in this chart?

20 A. No.

21 Q. Do you know what the median is?

22 A. No.

23 Q. You submitted a rebuttal report in this case, didn't
24 you?

25 A. Yes.

1 Q. Okay. And let's pull it up. PX 128.

2 Let's turn to your discussion of the BVAP analysis on
3 page 5.

4 On pages 5 to 7 of your rebuttal report, you offer
5 criticism -- criticisms of charts and in Dr. Alford's
6 report. Do you see that?

7 A. Yes.

8 Q. Okay. Starting on page 5 in the second paragraph of
9 your BVAP analysis section, you state that Dr. Alford
10 created a chart plotting the BVAP of each precinct. Do you
11 see that? It's in the very first sentence.

12 A. Yeah.

13 Q. Are you aware that Dr. Alford did not create these
14 charts, but that plaintiff's expert witness Dr. Barreto
15 prepared these charts?

16 A. That may -- that may be what he had said. I think he,
17 though, in his report said that he created the -- no. I
18 think he -- I'm sure he can speak to this. I thought he
19 subset his -- he created -- he based it on Dr. Barreto's
20 plot but then he subset it to the 12-county demonstration
21 area, I think is -- at least that's what I was referring
22 to. And then he also maybe included the -- not just the
23 Cooper -- or the -- yeah, the governor's race, but maybe a
24 contest from the year before as well.

25 Q. I see.

1 MS. McKNIGHT: And we can take just the callout
2 down just so we can see the chart. Thank you,
3 Mr. Williamson.

4 Q. Now, the chart on page 6 is your variation of the
5 chart from Dr. Alford and Dr. Barreto's; correct?

6 A. Correct.

7 Q. I'll get to some questions about how you varied in a
8 minute. But just for illustration purposes, this is the
9 type of chart we're discussing. This type of chart plots
10 precincts in the region for specific elections; correct?

11 A. Yes.

12 Q. Okay. And each dot represents a precinct; right?

13 A. That's right.

14 Q. And one of your first criticisms is you criticize
15 Dr. Alford that these charts look at precincts because
16 precincts vary widely in population. Do you see that
17 criticism? It's the third paragraph down in your BVAP
18 analysis.

19 A. Yeah.

20 Q. Okay.

21 A. Yeah.

22 Q. And would you agree with me that counties vary in
23 population, too?

24 A. Yes.

25 Q. And so do precincts; right?

1 A. That's right.

2 Q. And your BVAP analysis did not discern between
3 counties of different populations, did it?

4 A. No, it didn't. But these are not the same type of
5 points.

6 Q. Okay. Second, you criticize these charts because
7 precinct performance varies. Do you see that criticism
8 under the last paragraph under the BVAP analysis section?

9 A. Yes.

10 Q. Okay. Now, county performance varies, too; right?

11 A. All different units of analysis will vary in a variety
12 of different things.

13 Q. Okay. So when you conducted your regionwide analysis,
14 we don't know which counties or precincts need 40 percent
15 or lower and which need closer to 40 percent BVAP to
16 perform; correct?

17 A. Well, when we conduct the regionwide analysis, we
18 built into that is because it's a fairly large region with
19 a large number of precincts. One can draw a -- an actual
20 district that's, say, 47 percent BVAP and we will know how
21 it is, you know, going to perform on a variety of different
22 contests. In the case of a precinct, we might know how
23 that precinct will perform but we don't know how a district
24 will perform. And so we know we cannot draw a district out
25 of one precinct but we know that we can draw a district

1 inside of a larger 12-county region.

2 Q. But within that 12-county region, drawing a district
3 with some of those counties and not others as compared to
4 drawing another county with a different mixture of
5 counties -- a different district with different counties
6 would change how much BVAP would be needed; correct?

7 A. Yes. Yes, it would. That is true. But it gives the
8 map-drawer the flexibility to be able to draw the
9 46 percent district, a 48 percent district, et cetera, in
10 that general area.

11 Q. Understanding your point that precincts vary in
12 performance, your BVAP analysis did not discern between the
13 precincts in split counties that were included in VRA
14 districts as compared to the split portion drawn out of the
15 VRA district; right?

16 A. I just did a county -- like, I did not break up
17 counties in this particular analysis. But, of course, one,
18 you know -- one could do that.

19 Q. Okay. So when you did your analysis, you included all
20 of Vance County and all of Pasquotank County; is that
21 right?

22 A. Yeah. All the 12 counties in that region would be
23 included.

24 Q. And they would be whole in your analysis; right?

25 A. That's right.

1 Q. I'm sorry. Did you say, "That's right"?

2 A. That's right.

3 Q. Okay. Thank you.

4 I see on page 5 in your rebuttal a reference to a
5 responsibility that White voters who live in more racially
6 mixed areas are politically different from White voters
7 residing in more homogenous areas. You see that; right?

8 A. That's right.

9 Q. Okay. But your BVAP analysis did not discern between
10 counties with different Black population levels; right?

11 A. That's a different sort of analysis of -- what this
12 analysis is designed to discuss is that if you're going to
13 extrapolate that a precinct that is crossing over at
14 37 percent BVAP is therefore going to be good enough to
15 draw a 37 percent district, that is not an appropriate
16 extrapolation.

17 Because we know there's a lot of variation by precinct
18 and we don't know where they go together. But when we're
19 looking at a broader BVAP county level, 12-county region,
20 we know that within that, we have some flexibility as a
21 map-drawer to be able to put counties together in a way
22 such that we can get to that BVAP performing district. And
23 what my analysis shows is that when you do this in this
24 broader region as a general rule, 47 percent is going to
25 create a highly competitive district that very well could

1 perform for the Black-preferred candidate, but may well not
2 perform for the Black-preferred candidate.

3 Q. Okay. On page 6, on the third paragraph down,
4 starting with, "Simply." You state that "Simply looking at
5 two charts of precincts does not allow us to identify any
6 outliers or unusual patterns that might make a particular
7 precinct vote more for a D candidate." Do you see that?

8 A. That's right.

9 Q. Okay. In that same vein, wouldn't you agree that
10 looking at one chart of a 12-county region does not allow
11 us to identify any outliers or unusual patterns that might
12 make a particular precinct vote more for a D candidate?

13 A. I mean, that question doesn't make a lot of sense to
14 me. I do agree that when you look at a chart like a
15 histogram, you do not know how any particular precinct
16 might perform. But that's not what that analysis is
17 designed to show. This is an actual plot of precincts, and
18 what this -- at least my understanding was -- and I'm sure
19 Dr. Alford can testify to this when he goes -- is that an
20 extrapolation from this is designed to basically suggest
21 that a Black-performing district potentially could be drawn
22 if you stuck a bunch of 37 percent BVAP precincts together.
23 And if those 37 percent performing -- or 37 percent
24 performing BVAP precincts you put them together, you would
25 naturally get a district that's 37 percent BVAP and,

1 therefore, it may well perform.

2 Maybe that's not the extrapolation that one should
3 draw from this chart. But that was suggestive, at least in
4 my interpretation. And what I'm saying is that that
5 interpretation is not correct, because we don't know from
6 this, basically, where those 37 percent precincts are
7 located. Maybe they're all located in just one county. At
8 a countywide basis, you know you have all of those
9 precincts that you can basically form a district in a way
10 that would make sense in terms of getting to a 40 --
11 whatever performing district that my analysis would show,
12 you could easily do that. And you can't extrapolate that
13 from this chart.

14 THE COURT: Be in recess for 15 minutes.

15 (A recess is taken at 11:01 a.m.)

16 (Court is called to order at 11:15 a.m.)

17 THE COURT: You may continue the
18 cross-examination.

19 MS. McKNIGHT: Thank you, Your Honor.

20 Q. Dr. Collingwood, in your rebuttal report, you studied
21 Pitt and Edgecombe County performance, which is Enacted
22 Senate District 5; is that right?

23 A. Yes.

24 MS. McKNIGHT: You can pull up that rebuttal
25 report. It is PX 128, pages 22 through 26. And we'll

1 start on page 23.

2 Q. Page 23 shows the results of your analysis on
3 Pitt-Edgecombe. It says, "Electoral performance results
4 2022 Enacted District 5, Edgecombe and Pitt counties." Do
5 you see that?

6 A. Yes.

7 Q. And the results of your analysis show that the
8 Black-preferred candidates won every contest with over
9 50 percent -- 52 percent vote share. Is that right?

10 A. I think everyone but one was over 52.

11 Q. I see. Thank you.

12 Now, moving on to page 24. This is that same district
13 but the 2020 results. And it shows that Black-preferred
14 candidates won every contest with over 54 percent of the
15 vote share; is that right?

16 A. That's right.

17 Q. And some of them closer to the 60 percent vote share;
18 is that right?

19 A. I think there's one over 60 and one that's 59.4.

20 Q. And now let's turn to page 25. This analysis of
21 Enacted District 5 using 2018 data shows that
22 Black-preferred candidates won every contest with over
23 52 percent vote share. Do you see that?

24 A. Yes.

25 Q. Okay. And then page 26. These are the results of

1 your analyses for 2016 in Senate District 5. And it shows
2 that Black-preferred candidates won all contests with 16
3 out of 18 contests, having more than 54 percent vote share.

4 Is that what you see, too?

5 A. If you round up.

6 Q. Pardon me?

7 A. If you round up.

8 Q. I see. Are you thinking of the 53.8 and 53.6
9 contests?

10 A. Yes.

11 Q. Okay. Dr. Collingwood, do you know what the BVAP is
12 in Senate District 5?

13 A. Forty-one, maybe.

14 MS. McKNIGHT: Okay. Let's pull up Joint
15 Exhibit 6 at page 9.

16 Q. Dr. Collingwood, this is a joint exhibit, meaning it
17 was submitted by both parties. It is a stat pack for the
18 enacted plan. And this page is titled, "Census Voting Age
19 by Race Report." Do you see that?

20 A. Yes.

21 Q. Okay. And this is for district plan SL 2023-146. Do
22 you see that?

23 A. Yes.

24 Q. Okay. And I would ask you to look down to district
25 number 5 and read out the Black percentage number there.

11:19:08 1 A. Do you want me to round up?

11:19:10 2 Q. If you like.

11:19:11 3 A. Thirty-nine percent.

11:19:12 4 Q. Okay. So the actual number is 38.74 percent; right?

11:19:18 5 A. Correct. That's what's reported.

11:19:20 6 Q. Okay. And is it your understanding that the
11:19:25 7 demonstration districts are drawn bordering these counties
11:19:29 8 in SD5?

11:19:32 9 A. I -- that sounds right to me. Yeah.

11:19:35 10 Q. But you excluded the counties in SD5 from your
11:19:39 11 analysis, didn't you?

11:19:40 12 A. Correct.

11:19:41 13 Q. If you had included Pitt and Edgecombe counties in
11:19:45 14 your analysis with their guaranteed performance at
11:19:49 15 38.74 percent BVAP, would you expect them to lower the BVAP
11:19:54 16 figure you developed in your Black VAP analysis?

11:20:00 17 Q. Well, that wouldn't really make sense because you
11:20:03 18 already have a Black-performing -- we know it's a
11:20:06 19 Black-performing district here. And so it -- you wouldn't
11:20:12 20 really try to create a new -- if you added those counties
11:20:19 21 into the potential additional Black-performing district,
11:20:23 22 you may end up creating a situation where you still just
11:20:26 23 have another Black-performing district, and this one maybe
11:20:30 24 does not become a Black-performing district. So to me it
11:20:33 25 makes sense to keep those two counties together since

1 they're Black performing. And so see if you can
2 effectively, you know, see if there's another one that's,
3 you know, at issue and whether it can be drawn outside of
4 that area.

5 Q. I see.

6 Do you understand that you're here to testify as an
7 expert in map drawing?

8 A. Is it -- I think it's redistricting.

9 Q. Okay. And so my question is specifically about what
10 would happen to the analysis you conducted in your BVAP
11 analysis section. Okay?

12 My question is if you had included Pitt and Edgecombe
13 counties in your BVAP analysis with their guaranteed
14 performance at 38.74 BVAP, would you expect their addition
15 to lower the BVAP figure you developed in your BVAP
16 analysis?

17 A. From a straight -- if I'm just answering your question
18 without context, I think anyone would say, yes, it would
19 reduce the BVAP. But, again, that answer, I think,
20 requires some context in the sense that you already have a
21 Black-performing district basically to the south of this
22 area. So it makes sense to not -- to basically fix that
23 and leave that alone and to look at the area where the
24 Black population is still concentrated but has been -- is
25 effectively not performing in the current state senate

1 districts in that area because we want to see, is it
2 possible that an additional district in this area could be
3 drawn. And so, therefore, while factually your -- my
4 answer is anyone would sit -- have to say yes to that.
5 I -- I disagree with the sort of basis of the premise.

6 Q. I would like to ask you about a report submitted in
7 this matter by Dr. Alford. You did not find any errors in
8 how Dr. Alford produced his -- presented his numbers in his
9 analysis, do you?

10 A. I think that he might have gotten one of the names or
11 parties or races of the candidates in error by mistake.
12 But I think that was in one of his tables, maybe? But I
13 think that's an honest mistake and something that's easy to
14 do. I think Dr. Alford and I -- more often than not, we
15 typically agree on the raw results in the data and that is
16 we tend to disagree on what that means, I would say.

17 Q. Okay. So you did not find any errors in how he
18 presented his numbers, did you?

19 A. Like I said, I think I just referenced maybe one. But
20 in terms of the name and the race of the -- one of the
21 candidates or something like that. But overall, in terms
22 of his mathematical calculations, no.

23 Q. Dr. Alford found that the overall levels of White
24 crossover voting are high enough to indicate that majority
25 Black districts are not necessary to allow the election of

1 Black-preferred candidates. Do you agree with that?

2 A. Well, my BVAP analysis in the 12-county region
3 certainly demonstrates that a Black majority -- sorry, a
4 Black-performing district could be drawn under 50 percent.
5 That -- that said, as a blanket agreement, you know,
6 obviously we would need to look at that district and -- and
7 then conduct a performance analysis or some additional
8 analysis to confirm that.

9 Q. The analysis you conducted for this case, the racially
10 polarized voting analysis and the BVAP analysis, you did
11 not provide that to the Legislature to inform their map
12 drawing in fall of 2023; correct?

13 A. I performed this analysis when I was hired to do this
14 analysis, which was, I think, in 2024. So, therefore, it
15 would have been impossible for me to provide this to the
16 Legislature in 2021.

17 Q. Thank you.

18 I would like to discuss margin of error in CVAP with
19 you for a minute. You did not use CVAP for your analysis
20 in this case; correct?

21 A. That's not correct.

22 Q. Okay. Where did you use CVAP?

23 A. I used CVAP when discussing the margin of error
24 calculations by Dr. Trende.

25 Q. I see. So the only time you discussed it was in your

1 rebuttal, responding to Dr. Trende; correct?

2 A. As a -- if my memory serves correct, as a general
3 rule, the first analysis did not -- the first report that I
4 wrote did not delve much into CVAP. It wasn't part of the
5 analysis. I didn't really need to use it.

6 Q. Okay. So the analysis to my question is correct, that
7 you did not use CVAP for your analysis in this case; right?

8 A. Well, "analysis" is a very broad word. And so what I
9 would say is I didn't use CVAP for my racially polarized
10 voting, or BVAP analysis, because I didn't need that data,
11 if that's what your question is getting at.

12 Q. Thank you.

13 I'm going to ask you about point estimates. Would you
14 agree with me that point estimates from samples inherently
15 carry uncertainty with them?

16 A. Any time you have a sample of -- so let me explain it
17 this way: The ACS -- I assume you're getting at that, the
18 American Community of Survey -- is a sample survey. And so
19 any time you have a sample like that, you will have what's
20 known as a point estimate and a margin of error. And the
21 margin of error is colloquially known as statistical
22 uncertainty.

23 Q. And so pardon me, Dr. Collingwood. I'm trying to get
24 a "yes" or "no" answer to a yes-or-no question, if you can
25 bear with me. Point estimates from samples inherently

1 carry uncertainty with them; isn't that right?

2 A. Statistical uncertainty.

3 Q. Thank you.

4 And sampling error is one of those sources of
5 uncertainty; correct?

6 A. That is typically the only calculable uncertainty that
7 we can generate.

8 Q. Okay. So even at a statewide level, there is a
9 sampling error associated with ACS point estimates;
10 correct?

11 A. That's correct.

12 Q. And that's true nationally as well; correct?

13 A. That would be included with all ACS data.

14 Q. Okay. You don't dispute that there is uncertainty --
15 that this uncertainty is expressed in error margins, do
16 you?

17 A. The ACS provides margin of error numerical counts with
18 all of the point estimates that it provides down to the
19 bloc group.

20 Q. Okay. So this uncertainty is expressed in error
21 margins; is that right?

22 A. Sure.

23 Q. Okay. Let's discuss an example. Let's bring up PX
24 147. This is Mr. Esselstyn's rebuttal report. And we're
25 looking at page 7, Table 8A.

1 So on this table, I am looking at the estimated 2022
2 BCVAP of Demonstration District D. Would you agree with me
3 that that estimate is 50.14 percent?

4 A. I would agree with that.

5 Q. And you would agree that there's a margin of error
6 around that estimate?

7 A. There is a margin of error with every point estimate
8 from a ACS survey.

9 Q. And so isn't it correct that one question we try to
10 answer is how certain are we that the true BCVAP of the
11 district is above 50 percent based on a 50.14 percent
12 estimate?

13 A. Sorry. Can you rephrase the question?

14 Q. Sure. I understand in your rebuttal report that you
15 looked at this issue of margin of error and CVAP estimates;
16 correct?

17 A. That is correct.

18 Q. Okay. And isn't it correct that in this case, one of
19 the questions that's trying to be answered is how certain
20 we are that the true BCVAP of the district is above
21 50 percent based off of a 50.14 estimate?

22 A. That is the position of the defense certainly, and
23 Dr. Trende has -- you know, he has brought that issue
24 forward.

25 Q. Okay. Let's turn to your rebuttal report at PX 128.

1 And we'll look at page 18.

2 So in this Table 5 -- and pardon me, it's so small,
3 but we can zoom in in a moment. In this Table 5, you
4 provide a margin of error analysis for every senate
5 district in the enacted plan; is that correct?

6 A. Yes. I believe this is from the original enacted
7 plan, so before the 2023. Because that is at the time what
8 the ACS U.S. Census provided.

9 Q. And what's listed here are precise census-produced
10 error margins; correct?

11 A. This also taking into account of the aggregation
12 issues for Black citizen voting age population that I was
13 discussing yesterday. So that is the one calculation
14 that's made. You can see that the BVAPMOE column, third
15 from the right, has, you know, decimal points. And that's
16 usually indicative of a calculation. But besides that,
17 these would -- these are producing directly off of the
18 census ACS production.

19 Q. And do these census-produced margins avoid a lot of
20 the estimation issues that you and Dr. Trende discuss in
21 your reports?

22 A. They would.

23 Q. Okay. If I'm reading your chart correctly, I'm going
24 to look at District 39 as an example. So if we can expand
25 that for ease of reading.

1 If I'm reading your chart correctly, error margins in
2 North Carolina state Senate districts get as large as
3 1.76 percent. Do you see that there -- or 1.76?

4 A. That's the highest one here, I think.

5 Q. Okay. And then let's look at the lowest point. And
6 if you need us to scroll through this, we can. The
7 smallest error margin I see on Table 5 is .21 in Senate
8 District 50.

9 Would you agree with me that that's the highest and
10 the lowest error margin we see in Table 5?

11 A. You know, there's a lot of activity on this -- on the
12 screen right now. But I -- I accept your representation
13 that that's the high and the low.

14 Q. Okay.

15 A. The min or the max.

16 Q. So even if we use the smallest reported error margin
17 of .21 percent for any district existing in the North
18 Carolina Senate, 50 percent would still be inside the
19 confidence interval for Demonstration District C -- D and
20 its 50.14 percent estimate; right?

21 A. As a matter of logic and reason, yes, that is correct.
22 But that -- I'm not sure that I would then say, oh, the
23 technically correct margin of error calculation that we
24 would get with the microdata for the demonstration district
25 is, you know, higher or lower than that. It's -- it's a

1 reasonable statement to say that that -- it probably falls
2 within that range. But, you know, I can't -- I can't say
3 that for sure. And in addition to that, like I said, there
4 still is this minor margin of error adjustment that I had
5 to make here where I'm aggregating the racial population
6 for Black together. And so even these numbers are probably
7 slightly making the margin of error a little bit higher
8 than what the underlying microdata would be. Then again,
9 let me just say, microdata sounds fancy. It's just saying
10 the surveys underlying the geographic unit.

11 Q. Okay. And have you measured the -- the difference
12 that it would make if you correct for that margin?

13 A. I mean, I can't -- I can't do that. That's not --
14 that's not calculable, to make that comparison.

15 Q. Let's move on to your rebuttal report, PX 128. We'll
16 look at page 15.

17 And just so we understand this discussion, this is
18 your own calculation of the error margin for this district;
19 is that right?

20 A. Correct.

21 Q. Okay. And I see that your own calculation of the
22 error margin for Demonstration District D1 -- this is shown
23 on page 15 of PX 128 -- is .594 percent when you estimate
24 using whole counties plus bloc groups; is that right?

25 A. That's right.

1 Q. Okay. So is that 50.14 percent plus or minus
2 .594 percent?

3 A. That's right.

4 Q. So you'd agree that we cannot be at least 90 percent
5 certain that the true BCVAP of Demonstration District D is
6 greater than 50 percent?

7 A. With this point estimate, you -- you could not say
8 that. But again, as I discussed in my direct examination,
9 this .594 is almost certainly overinflating the margin of
10 error because of this aggregation issue which I discussed,
11 which empirically, I demonstrated, increases the margin of
12 error quite substantially, number one.

13 And then number two, because we have split bloc groups
14 here that this actually technically isn't accounting for.

15 And then number three, we have -- we do not have
16 access to the, you know, underlying microdata that allow us
17 to actually calculate that.

18 And so I think it's for this reason why it's very
19 uncommon to see people calculating margins of error in
20 demonstration districts. Simply the disaggregation of bloc
21 groups using a margin of error, you just -- there's no
22 known way to disaggregate the margin of error estimate from
23 a bloc group to a bloc. And so you're naturally going to
24 be coming up with a fuzzy number in the first place, in a
25 way that the point estimate is not going to be fuzzy as

11:37:55 1 much, right? And so I think that's why you don't see this.

11:38:00 2 But as a matter of, like .94, plus or minus the BCVAP,
11:38:08 3 is certainly under 50 percent. Yes.

11:38:13 4 Q. I would like to discuss one last topic with you,
11:38:16 5 Dr. Collingwood. Let's pull up your résumé at PX 37.

11:38:30 6 Dr. Collingwood, on Monday night, plaintiffs served us
11:38:34 7 with an updated version of your résumé. Were you
11:38:37 8 responsible for editing this version -- this updated
11:38:41 9 version of your résumé?

11:38:42 10 A. Yes.

11:38:42 11 Q. Okay. What did you change in it?

11:38:46 12 A. I think I added a book, number 3 there, that I'm
11:38:51 13 working on with a colleague. And I think I have two
11:38:55 14 additional research articles.

11:38:58 15 Q. Okay. Did you remove anything?

11:38:59 16 A. No.

11:39:01 17 Q. Okay.

11:39:02 18 A. You would never do that in academia. You know, it's a
11:39:05 19 list of all of our accomplishments. Why would we do that?

11:39:08 20 Q. It's a good question. I would like to ask you about
11:39:10 21 that.

11:39:11 22 MS. McKNIGHT: Let's pull up plaintiff's original
11:39:13 23 Exhibit 37. Side by side, please, for us.

11:39:25 24 Q. So, Dr. Collingwood, we notice something missing on
11:39:27 25 the first page of your updated résumé. Do you notice it,

1 too?

2 A. Oh, yeah. Well, after we -- it is true that after we
3 talked, I said -- I'm -- and I started looking at other
4 colleagues' CVs, and, you know, in the last year or so,
5 people at my level of associate professor who is going up
6 for full in academia do not have their chair or their
7 committee or the people like that. So that would be the
8 difference here.

9 But I understand why you're potentially trying to
10 point that out for something. You can also see that I
11 don't have my website because that's been discontinued --
12 or my dot com. I forgot to pay for it or something like
13 that. So that would explain that.

14 Q. I see.

15 So you've removed reference to the fact that Matt
16 Barreto chaired your Ph.D. committee; is that correct?

17 A. Well, in addition to Chris Parker, Louise Fraga, Chris
18 Adolf, Peter Hoff.

19 MS. McKNIGHT: Okay. Thank you. I have no
20 further questions.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION BY MS. THEODORE:

23 Q. You were asked some questions by counsel about the
24 BVAP in Enacted Senate District 5, which is the
25 Pitt-Edgecombe district. Do you recall that?

11:41:01 1 A. I do.

11:41:02 2 Q. And for measuring BVAP, the appropriate figure is any
11:41:06 3 part Black; is that correct?

11:41:08 4 A. Yes.

11:41:09 5 Q. Okay. And all the analysis of the BVAP in your

11:41:14 6 report, including the BVAP thresholds in your BVAP

11:41:17 7 analysis, uses the any part Black calculation; correct?

11:41:20 8 A. Correct.

11:41:21 9 Q. Okay. And you were shown a page of the stat pack for

11:41:25 10 the enacted map which had a Black voting age percentage of

11:41:30 11 38.74 percent. Do you recall that?

11:41:33 12 A. Yes.

11:41:34 13 Q. Do you know if legislative defendants' counsel was

11:41:37 14 showing you the appropriate numbers for any part Black?

11:41:41 15 A. I don't.

11:41:43 16 MS. THEODORE: All right. Let's pull up Joint

11:41:46 17 Exhibit 6, page 13.

11:42:04 18 Q. Okay. If you look at district -- Senate District 5,

11:42:10 19 what is the appropriate any part Black figure for the

11:42:14 20 Pitt-Edgecombe cluster for Senate District 5?

11:42:17 21 A. 40.35.

11:42:19 22 Q. Okay. So the 38 percent figure that legislative

11:42:22 23 defendants' counsel was showing you a different figure, not

11:42:26 24 the -- not the BVAP figures that you've been using in your

11:42:30 25 report?

11:42:32 1 A. Yeah. I mean, they were just showing the single race.
11:42:35 2 And so any time you're dealing with Black voters or doing
11:42:40 3 some sort of Black analysis, to the extent that you can,
11:42:43 4 you want to include, you know, Black alone, plus Black,
11:42:48 5 plus other, plus Black plus other different groups, and
11:42:52 6 they get aggregated together into what's known as "any part
11:42:55 7 Black." So that would be the appropriate number.

11:42:59 8 Q. Okay. All right.

11:43:11 9 MS. THEODORE: Troy, can we pull up the joint
11:43:14 10 factual stipulations in the pretrial order? Do you have
11:43:17 11 that?

11:43:25 12 Q. All right. Let's go to page 17.

11:43:31 13 Okay. Do you see there, joint factual stipulation 65?
11:43:35 14 It says that in the 2022 general election for State Senate
11:43:40 15 District 3, the Republican White candidate defeated the
11:43:48 16 Democratic Black candidate by a margin of 52.53 percent to
11:43:53 17 47.47 percent. Do you see that?

11:43:55 18 A. Yeah.

11:43:56 19 Q. And that district, it's stipulated, had a BVAP of
11:44:01 20 42.33 percent?

11:44:04 21 A. Yes.

11:44:06 22 Q. Are you -- are you -- well, I'll just represent to you
11:44:10 23 that it's stipulated that Senate District 3 in the 2022
11:44:16 24 elections is in the same region as Senate District 1 and
11:44:21 25 Senate District 2, in the 2023 map.

1 So you see that that -- the Black-preferred candidate
2 loses by five points in Senate District 3 in 2022 even
3 though the BVAP is 42.33 percent. Do you see that?

4 A. I do.

5 Q. And that's the case even though in the neighboring
6 Pitt-Edgecombe district, the Black-preferred candidate wins
7 with a 40.35 percent BVAP; right?

8 A. That's right.

9 Q. Okay. Does that highlight in your mind sort of the
10 fact that it's important to consider particular counties,
11 particular regions when you're estimating racially
12 polarized voting and when you're estimating the BVAP needed
13 to win in a particular region?

14 A. Yeah. I mean, you're going to have different levels
15 of White crossover voting in some of these areas.
16 Polarization will be either higher or lower in different
17 regions based on a variety of, you know, features of the
18 political and social, economic environment. So, yeah, that
19 makes sense to me.

20 Q. Even in counties that are right next to each other?

21 A. Yeah. It can happen. Often, it's the presence of a
22 university that can change things.

23 Q. All right. So does the fact that Senate District 5
24 performs at 40.35 percent BVAP mean that a district in the
25 demonstration area or a district drawn within current

1 Senate -- within the counties in current Senate Districts 1
2 and 2 would perform at that same BVAP level?

3 A. Well, no. No. Definitely not. Because you need to
4 do a more localized sort of analysis.

5 Q. Okay. Okay. You were asked some questions in
6 connection with your BVAP analysis about a report by
7 Dr. Lisa Handley. Do you recall that?

8 A. Yes.

9 Q. Okay. And you were shown some tables from that expert
10 report in a different case; right?

11 A. In a different case --

12 Q. I'll say that again. That expert report was not filed
13 in this case; right? That was an expert report in a
14 different case?

15 A. It was -- I mean, I don't know. I don't know if it
16 was an expert report or it was just a report to the
17 Legislature that's looking at redistricting. I don't
18 actually know.

19 Q. You don't even know what that document was?

20 A. I've never seen it. I mean, maybe they -- maybe it
21 was presented to me in my deposition, but I don't recall
22 that. And I've never really looked at that before.

23 Q. Were you shown any statement in that report or
24 testimony from Dr. Handley where she explained her
25 methodology?

1 A. There were -- there was some explanation of the
2 methodology in the conclusion section.

3 Q. Were you shown the details?

4 A. No, I wasn't.

5 Q. If what Dr. Handley was doing in that report was
6 measuring the BVAP needed within a county grouping that is
7 larger than any particular district to assess the threshold
8 at which a district in that grouping would perform, would
9 that be consistent with what you were doing in your BVAP
10 analysis?

11 A. It's almost -- it's -- it's almost exactly the same
12 thing that I was doing in terms of the -- that -- the
13 geographic -- a larger grouping and then voter turnout by
14 race, and then racially polarized voting, incorporating
15 that information together to get to, you know, the BVAP
16 that would be required to, on average, elect -- potentially
17 elect a Black-preferred candidate, but no guarantee.

18 MS. THEODORE: Okay. Can we go to the first page
19 of Dr. Handley's report? Scroll down a little bit. Oh,
20 yeah. No. Sorry. Go back up. First page. Okay.

21 Q. Do you see that Dr. Handley says that her analysis is
22 specific to those counties and districts presented in this
23 report and that particularly given the differences in
24 voting patterns that exist across North Carolina, my
25 analysis cannot be extrapolated to other counties and

1 districts not analyzed in this report? Do you see that?

2 A. Yes.

3 Q. Okay. Do you know whether Dr. Handley analyzed any of
4 the counties or districts that are at issue in this case?

5 A. Like I said, I -- I mean, I know Dr. Handley a bit,
6 but we've never discussed this case or her work in this
7 case, or I think anything about North Carolina.

8 Q. Okay. Were there any endogenous elections available
9 for you to use for your analysis in this case?

10 Well, let me ask it again. Have there ever been any
11 elections in Enacted District 1 and 2 in the State Senate
12 before 2024?

13 A. No. No. Just recently the data have become
14 available. Like, a day before the trial started or
15 something.

16 Q. Okay. And the elections that just happened in the
17 enacted districts in 2024, those would be considered the
18 endogenous elections; is that right?

19 A. That's right. Those are going to become the most
20 important elections from a probative standpoint. It's
21 not -- just because you find something in those that, you
22 know, is maybe different than others. But as a general
23 rule, the courts, my experience, typically weigh the
24 endogenous elections the most.

25 Q. And that's in a circumstance that wasn't the case --

11:51:18 1 well, there were no endogenous elections when you conducted
11:51:21 2 your initial analysis in this case; is that right?

11:51:24 3 A. Yeah, that's right.

11:51:32 4 Q. All right. Okay.

11:51:39 5 MS. THEODORE: Can we pull up PX 128, page 4.

11:51:54 6 Q. All right. This is a page from your rebuttal report.

11:51:57 7 So you gave testimony during cross-examination that

11:52:03 8 something around, like, 84 percent of people with the

11:52:09 9 surname Morgan in the United States are White and something

11:52:14 10 around 12 percent or so is Black, and that the same is true

11:52:18 11 for the last name Edmunds. Do you recall that?

11:52:22 12 A. Yes.

11:52:22 13 Q. Okay.

11:52:24 14 A. This again?

11:52:26 15 Q. In your report, you wrote that the two candidates'

11:52:31 16 surnames are not especially racially distinctive from one

11:52:35 17 another. And you're referring there to Morgan and Edmunds;

11:52:39 18 right?

11:52:39 19 A. That's right.

11:52:40 20 Q. Is that consistent with the testimony that you gave

11:52:44 21 that around 84 percent of Morgans in the United States are

11:52:50 22 White and around 12 percent are Black, and the same is true

11:52:53 23 for the last name Edmunds?

11:52:55 24 A. Yes, it is.

11:52:56 25 Q. Okay. Is that -- you also say on this page that both

1 Black and White folks might realistically have either of
2 those names. Is -- are the percentages that you gave
3 consistent with that testimony?

4 A. Yes, they're within reason.

5 Q. Okay. And you also talked a little bit about the
6 relative numbers of Black and White people in the United
7 States. Can you explain why, sort of, the --
8 mathematically, the comparison between the frequency with
9 which those surnames are associated with Black and White
10 people and the relative numbers of Black and White people
11 in the United States support your statement that Black and
12 White folks might realistically have either of those names?

13 A. Right. So in -- if 12 to 13 percent or so of the U.S.
14 population is African-American. And, obviously, that's
15 going to vary. And it's going to be more, I think -- in
16 North Carolina, I guess it's around 20 percent or so, or a
17 little higher.

18 So then what that means is that if roughly 12 or 14 to
19 17 percent of Black people have a certain name, that's
20 fairly similar to their overall share of the population so
21 that you're getting closer to an apples-and-apples
22 comparison, which means -- and then on the other hand,
23 where, you know, the share of the White population is
24 least -- many of them have that -- you know, it's maybe 60
25 or 70 percent, depending on where you are, population is

11:54:42 1 White. And so, you know, a large share of Morgans are also
11:54:48 2 of that same -- you know, the distribution is roughly the
11:54:51 3 same. So that's why it's kind of an equal situation. It's
11:54:56 4 comparing the share of the population to the share of the
11:55:00 5 people that have that name.

11:55:07 6 But, of course, it's not exactly the same thing. But
11:55:09 7 all of this, in my view, is speaking to the same concept,
11:55:12 8 which is that Blacks and Whites both have this name
11:55:19 9 somewhat, but it's not overly Black and it's not overly
11:55:25 10 White such that it makes it harder for that to be a cue.
11:55:31 11 Whereas a name like Washington or something like that,
11:55:33 12 that's more evenly split in terms of the overall percentage
11:55:36 13 of White people versus Black people who have the surname
11:55:39 14 Washington. And so there, you're going to go say, oh, as a
11:55:44 15 share of the population, there's more -- Blacks are, say,
11:55:48 16 12 percent of the population, but of the share of all
11:55:51 17 Washingtons, they're 50 percent. So that means that if you
11:55:54 18 randomly -- basically, the -- the share is higher. And so
11:55:59 19 that becomes more what would be known as a Black name.

11:56:02 20 MS. THEODORE: Okay. Yeah, can we pull up the --
11:56:22 21 Dr. Collingwood's opening report, which is Plaintiff's
11:56:25 22 Exhibit 36.

11:56:39 23 Q. And you recall you were asked some questions about the
11:56:43 24 2018 State Supreme Court and Court of Appeals races which
11:56:47 25 had the asterisks.

1 MS. THEODORE: Let's go to Table 2. Page 6,
2 please.

3 Q. All right. So you were asked some questions about the
4 2018 State Supreme Court and Court of Appeals races, which
5 have the asterisk here. Do you recall that?

6 A. Yeah.

7 Q. Okay. And in those races, the Black-preferred
8 candidate got more votes than any other single candidate.
9 But if you combined the vote totals of the two candidates
10 preferred by White voters, that combined vote total is
11 higher than the votes for the Black-preferred candidate; is
12 that right?

13 A. Yes.

14 Q. So can you explain why it's appropriate to mark those
15 races as yes to signal White blocking even though the
16 Black-preferred candidate got more votes than any other
17 single candidate?

18 A. Yes. There's two reasons. And it's empirically
19 driven. It's not like I'm just saying, okay, let's put
20 them together. You can see in the racially polarized
21 voting analyses that basically no Black people are voting
22 for the lesser vote-getter of those two candidates, and
23 White voters are voting for those two candidates at a
24 reasonable -- it's not super high but it is a reasonable
25 amount.

1 In addition to that, I then validated by doing
2 basically a scatter plotter correlation, you know, kind of
3 as I'm working and putting all of this together. I do -- I
4 basically create a relationship between percent White or
5 percent Black and support for these two candidates and look
6 at the correlation basically. And I can see that they're
7 basically trending in the exact same direction, which means
8 that a subset of White voters are basically splitting off
9 from the dominant White candidate and instead preferring,
10 say, Anglin or Ray. And so if one of them hadn't run, it's
11 a very strong assumption that those same voters would have
12 gone and supported the other candidate -- the other
13 White-preferred candidate. And so that's the first sort of
14 piece.

15 And then the second piece is we want to see in
16 general, we have -- we're trying to predict how a certain
17 district will perform. And so we -- assuming that -- and,
18 you know, predicting that it's generally going to have a
19 Black-preferred candidate and a White-preferred candidate,
20 two candidates; and so we're predicting on to that. Every
21 other contest -- say these two I looked at -- there were
22 two dominant Black-preferred -- or one dominant
23 Black-preferred candidate and one dominant White-preferred
24 candidate. And so it makes sense given this empirical
25 justification to combine those two for the purposes of

1 doing this blocking analysis.

2 That said, given that it is a subjective decision that
3 I have made, I have basically incorporated what would
4 happen if we didn't make that decision, would that change
5 my overall performance analysis? Yes, it would drop it
6 down slightly. But it's very similar. And any analyst
7 would basically draw the same conclusion -- the overall
8 conclusion.

9 Q. Okay. And on page 19 of your -- let's go to page 19
10 of the report.

11 On page 19 of the report, you specifically disclose
12 that you made this choice; is that right?

13 A. Correct.

14 Q. And you analyze what would happen if someone made a
15 different choice; right?

16 A. That's right.

17 Q. Okay. And you provide the blocking numbers that would
18 result if someone made a different choice and chose to
19 consider those particular elections as not involving
20 blocking; right?

21 A. Right. I mean, I should -- I should say these types
22 of possible subject decisions are -- when you do these
23 types of analyses, you do come into these scenarios. And
24 so what I think some people do is they just don't include
25 it at all. They're just like, I don't want to get into

1 this subjective situation and so I'm just not going to
2 include that. And I want to be transparent and include
3 that information. And so that's -- and I say this is what
4 I think is the right approach given everything -- I've
5 justified it. It's in the -- it's in the report. But if
6 someone -- or the Court wants to take a different angle on
7 this, here's the information. And I think that's a
8 transparent way to do things.

9 Q. Okay. And if you were to drop those two three-way
10 2018 contests from the analysis, the blocking rate in
11 Senate District 1 would be 41 out of 47; is that right?

12 A. 49. 41 out of 49.

13 THE COURT: You've got to take them out of both.

14 A. Oh, yeah. It's late. No, it's -- yeah. Yes. That's
15 right. Yes.

16 Q. And similarly, if you were to drop those two -- those
17 two elections from your analysis of Senate District 2, the
18 overall blocking rate across all four years would be 42 out
19 of 47; is that right?

20 A. Right.

21 Q. And the point of this analysis is to use past election
22 results to predict what would happen in state legislative
23 elections; is that right?

24 A. That's right.

25 Q. And is it typical in state Senate elections that

1 there's one Republican candidate and one Democratic
2 candidate?

3 A. Yes.

4 Q. Because there are -- there's a primary to select the
5 Democratic candidate and the Republican candidate?

6 A. That's right.

7 Q. And are you aware whether in these 2018 judicial
8 elections, there wasn't a primary for the Republican
9 candidate?

10 A. I actually wasn't aware of that. But that -- that
11 might explain why you're seeing this.

12 Q. Okay.

13 All right. So you were asked a series of questions
14 comparing the rates of White crossover voting in Enacted
15 Senate Districts 1 and 2 and the demonstration area. Do
16 you recall that?

17 A. Yes.

18 Q. Okay. And on average, Enacted Senate Districts 1 and
19 2 had higher White crossover voting than the demonstration
20 area; is that right?

21 A. Correct.

22 Q. Okay. And in conducting a performance analysis, does
23 the higher rate of White crossover voting in Enacted Senate
24 Districts 1 and 2 mean that those districts are more likely
25 to perform for Black voters than a district drawn inside

1 the demonstration area?

2 A. It's not at all. That type of approach just
3 wouldn't -- you wouldn't do that kind of comparison. We
4 already know that State Senate Districts 1 and 2 do not
5 perform for Black-preferred candidates. From 2018 to 2022,
6 something like 31 elections occurred that I analyzed
7 statewide subset to those districts, and the
8 Black-preferred candidate lost every single one of them.

9 And so the question of the demonstration is more --
10 okay. Let's just establish that there's racially polarized
11 voting, and -- you know, in this area. And so we see that
12 it is, and then we're going to basically incorporate that
13 into a BVAP analysis as to how this area would potentially
14 perform with -- knowing there's a leeway here, we know the
15 general area, what racially polarized voting generally is
16 like in these areas. Obviously, it's not going to be
17 exactly the same in every single county or -- but the
18 general area, right? That's guidance. And then we know,
19 you know, based on the voter turnout, we can calculate a
20 reasonable scientific BVAP estimate as to what generally in
21 this space a BVAP would be to narrowly elect the
22 Black-preferred candidate in, you know, a particular
23 contest. So they're serving different purposes, those
24 analyses.

25 Q. And is it possible that the higher rate of White

1 crossover voting in Enacted Senate District 1 or 2 might be
2 attributable to higher rates of White crossover voting in
3 counties that are in those districts but that are sort of
4 far away geographically from the Black Belt counties?

5 A. Yeah. I mean, that -- I didn't do that specific
6 analysis. But that is most likely the case.

7 Q. And those areas of Senate Districts 1 and 2 that are
8 far away geographically would be harder to include in a
9 district where you raised the BVAP. Is that fair to say?

10 A. That's right. It's just, you know, at some point you
11 can only include, you know, so many counties. And as you
12 start going further and further away from that core Black
13 Belt area, you're starting to basically create
14 interesting-looking districts, if you wanted to do that.
15 And so I'm not trying to do that, right? So it just -- it
16 wouldn't really make sense to do that, I think.

17 Q. It might be impossible to draw a 42 percent BVAP
18 district that includes, sort of, Black Belt counties and
19 also counties that are geographically far away, like, you
20 know, in the Outer Banks, for example?

21 A. Yeah, it's -- for sure, that's possible. Yeah, I
22 don't know for sure, but -- so I said "for sure" -- sorry.
23 That's sort of a California thing, so excuse me. But
24 definitely that is certainly possible.

25 Q. Dr. Collingwood, I know you haven't done the RPB

12:08:29 1 analysis of the 2024 results yet. But do you happen to
12:08:32 2 know whether -- just as a, sort of, matter of pure election
12:08:35 3 results, whether the Black-preferred candidate won in
12:08:37 4 Senate District 1 or 2 in 2024?

12:08:41 5 MS. McKNIGHT: Objection, Your Honor. The experts
12:08:43 6 have not done any analysis of the 2024 election yet.

12:08:48 7 THE COURT: Well, y'all are going to supplement;
12:08:50 8 right?

12:08:51 9 MS. THEODORE: Okay. Fair enough.

12:08:54 10 THE WITNESS: I have a suspicion, but it's true.
12:08:56 11 I can't say for sure.

12:08:59 12 Q. Okay. I just have one final question, which was that
12:09:02 13 we've been spending a lot of time talking about your BVAP
12:09:06 14 threshold analysis during the cross-examination. Is the
12:09:15 15 BVAP threshold analysis that you did part of the *Gingles* II
12:09:19 16 or *Gingles* III analysis that you did?

12:09:22 17 A. Well, it incorporates a lot of the same analysis or
12:09:25 18 same data. But it is a separate -- it's a separate focus
12:09:31 19 of the report.

12:09:37 20 Q. Did you do that BVAP threshold analysis in this case
12:09:40 21 because counsel asked you to?

12:09:41 22 A. Yes.

12:09:46 23 MS. THEODORE: Okay. That's it.

12:09:47 24 THE COURT: Thank you.

12:09:49 25 Anything else?

1 MS. McKNIGHT: No, Your Honor. Thank you.

2 THE COURT: Thank you, Doctor. Please watch your
3 step. There's a step up as you come off the witness stand
4 and a step down through the gate.

5 Plaintiffs may call the next witness.

6 MR. JONES: Plaintiffs call Dr. Traci Burch.

7 THE COURT: And watch your step, ma'am. There's a
8 step down as you get near.

9 THE WITNESS: The carpet helps. Thank you.

10 **TRACI BURCH,**

11 was first duly sworn and testified as follows:

12 THE COURT: Good afternoon, Doctor.

13 THE WITNESS: Good afternoon, Your Honor.

14 Is there, like, a specific mic here that I need?

15 THE COURT: That black device between your bottle
16 of water and the computer screen is actually a microphone.
17 It will help everybody to hear you. You've got to hit the
18 right spot. If you're too far away, we won't hear you; if
19 you're too close, everybody will think you're yelling at
20 them.

21 THE WITNESS: Gotcha. Just let me know. And let
22 me know if I'm speaking too quickly as well because I tend
23 to --

24 THE COURT: I'm sure our court reporter will let
25 you know. Because it's really hard to be a court reporter

1 in general, but it's really hard when there's fast talkers.
2 So we'll all try and not be fast talkers the rest of the
3 trial. Thank you.

4 You may proceed.

5 MR. JONES: Thank you, Your Honor.

6 DIRECT EXAMINATION BY MR. JONES:

7 Q. Good afternoon, Dr. Burch. What is your educational
8 background?

9 A. So I did my bachelor's degree at Princeton in
10 politics, which is what they call political science, and
11 with a minor in African-American studies. And I did my
12 Ph.D. at Harvard in government, which is what they call
13 political science, and also in social policy, which is a
14 separate field.

15 Q. When did you get your Ph.D.?

16 A. In 2007.

17 Q. And what is your current job?

18 A. So currently I am both a professor of political
19 science at Northwestern as well as a research professor at
20 the American Bar Foundation.

21 Q. And, Dr. Burch, an earlier version of your CV in this
22 case listed you as an associate professor. Do I gather
23 that you recently had a promotion?

24 A. Yes. That's right.

25 Q. How long have you taught at Northwestern?

1 A. Since 2007.

2 Q. Are you tenured?

3 A. Yes. Since 2014.

4 Q. Have you served as a peer reviewer for academic
5 journals or other academic entities?

6 A. Yes. All the time. So I have reviewed work for many
7 of the flagship journals in our field, so the *American*
8 *Political Science Review*, *Journal of Politics*, for *Nature*,
9 for *Science*, for the *American Sociological Review*. I've
10 served as a reviewer for National Science Foundation;
11 multiple university presses including Princeton, University
12 of Chicago, Cambridge. I am -- I have served on the
13 editorial board of journals, including the journal for the
14 elections, voting behavior, and public opinion section of
15 the American Political Science Association. So that's
16 political behavior. And currently I am editor-in-chief of
17 *Law & Social Inquiry*, which is a law and social science
18 journal.

19 Q. Have you won any awards for your academic work?

20 A. Several. So since getting my Ph.D., I've been awarded
21 several prizes for both my dissertation as well as my book.
22 So I was awarded the best dissertation in political science
23 at Harvard as well as several national awards for my
24 dissertation from the American Political Science
25 Association. My book, "Trading Democracy For Justice,"

1 also won multiple awards, national awards, including the
2 Ralph Bunche Award from the American Political Science
3 Association, as well as for -- from the C. Herman Pritchett
4 Award from the Law and Courts Section.

5 Q. Can you briefly describe your current areas of
6 academic focus?

7 A. Yes. I do work in political behavior. And in
8 particular, I focus on political participation and barriers
9 to voting. I work in the areas of race and ethnic politics
10 as well as criminal justice politics. And racial
11 inequality and public policy as well.

12 Q. Do you teach courses on all of those topics?

13 A. I do. For both Ph.D. students as well as
14 undergraduates.

15 Q. And your CV has a list of all of your publications.
16 But just generally, have you published peer-reviewed
17 academic articles on all of those topics?

18 A. Yes.

19 MR. JONES: Can we pull up Plaintiff's Exhibit 22.

20 Q. Dr. Burch, do you recognize this as a copy of your
21 current CV?

22 A. I do.

23 Q. Great.

24 And looking at your list of publications, can you
25 identify just a few examples? It doesn't have to be

1 comprehensive. There's a lot of publications here. But
2 just a few examples of works you have published that relate
3 to topics you addressed in this case.

4 A. So, yes. I study -- I conducted several studies in
5 which I've looked at demographic information, such as for
6 both my sole-authored book, "Trading Democracy For
7 Justice," as well as my coauthored book with Jennifer
8 Hochschild and Vesla Weaver, "Transforming the American
9 Racial Order."

10 I've also conducted, again, work looking at
11 demographics, voter participation and turnout in my work on
12 felony disenfranchisement in *Law in Society Review* and
13 *Political Behavior*. And I've also looked at voter turnout
14 as well as differences in turnout and other demographics by
15 race in some of my recent work looking at political
16 responses to officer-involved killings as well.

17 Q. Have you done any academic work involving the state of
18 North Carolina?

19 A. Yes. Several of my published articles and my book use
20 administrative data as well as demographic data from North
21 Carolina. And I also conducted fieldwork here back in 2008
22 as well.

23 Q. Have you ever testified as an expert witness at a
24 trial before?

25 A. Yes. I believe this is my 12th time.

1 Q. And did the courts in those other cases accept you as
2 qualified to provide expert opinions?

3 A. Yes. They've all -- some haven't, I think, issued
4 opinions, but they've all let me testify.

5 Q. In any of those cases, did you testify as an expert
6 witness about Senate Factors for purposes of Section 2 of
7 the Voting Rights Act?

8 A. I did. In several cases, including *Milligan v. Allen*,
9 *Stone v. Allen*, *Petteway v. Galveston County*, *White versus*
10 *State Board of Election Commissioners*, and *Nairne v. Ardoin*
11 and -- *Robinson v. Ardoin*, and *Alpha Phi Alpha Fraternity*
12 *v. Raffensperger*. I believe *The People versus Alabama* case
13 was a Section 2 case as well. I can't remember if I
14 actually did Senate Factors there.

15 Q. And which states were those other cases in where you
16 testified about Senate Factors for purposes of Section 2 of
17 the VRA?

18 A. Alabama, Georgia, Texas, Louisiana, Mississippi.

19 Q. Was any of your prior expert testimony in cases here
20 in North Carolina?

21 A. Yes. I testified in a case a few years ago, *Community*
22 *Success Initiative v. Moore*.

23 Q. And, Dr. Burch, where did you grow up?

24 A. In Macon, Georgia.

25 MR. JONES: Your Honor, at this time plaintiffs

1 tender Dr. Burch as an expert in race, inequality,
2 political behavior, political participation, and barriers
3 to voting.

4 THE COURT: Okay.

5 Q. Dr. Burch, you submitted a couple of reports in this
6 case in which you addressed collectively five of the Senate
7 Factors; is that right?

8 A. That's right.

9 Q. And in your opening report, just for a quick overview,
10 you addressed Senate Factors 5, 6, and 7, and in a rebuttal
11 report, you also responded to Dr. Taylor's analysis of
12 Senate Factors 8 and 3. Is that right?

13 A. Yes. That's correct.

14 Q. Okay. Starting on page 3 of your opening report, I
15 would like to go into some detail now about your analysis
16 of Senate Factor 5. And for starters, can you just tell
17 the Court, what is Senate Factor 5?

18 A. So Senate Factor 5, of course, is the -- asks about
19 the extent to which minority group members bear the effects
20 of discrimination in areas -- basically, socioeconomic
21 areas such as education, employment, and health, which
22 hinder their ability to participate effectively in the
23 political process.

24 Q. Okay. Let's start with education. And first of all,
25 what impact does education and racial disparities in

1 education have on voter participation?

2 A. So education is one of the fundamental explanatory
3 variables for voting participation. It's -- in political
4 science, we think about educational attainment as the most
5 power -- most important predictor in voting. In a pretty
6 famous paper, the authors write, quote, "The powerful
7 relationship between education and voter turnout is
8 arguably the most well-documented and robust finding in
9 American survey research."

10 So we know as political scientists that education
11 affects voter turnout. And the way we typically think
12 about the relationship is to suggest that voting, like many
13 activities, it's costly. You have to take time to learn
14 about candidates. You have to figure out how to go vote.
15 You have to figure out your polling place. If you're going
16 to figure out -- if you're going to vote or able to vote by
17 mail, you then have to figure out the process, what kinds
18 of documents you need, you have to obtain those documents.
19 Those sorts of things. And people with higher educational
20 attainment are just better equipped to be able to
21 understand and navigate those processes, to learn about and
22 gather information about candidates and the like. So they
23 have the resources available -- more of the resources
24 available to be able to overcome the cost of voting.

25 Q. Okay. Let's talk now about racial disparities in

1 education here in North Carolina. Turning to page 11 of
2 your report, what did you find regarding racial disparities
3 in educational attainment on a statewide basis?

4 A. So on a statewide basis, I found that there were large
5 gaps in educational attainment between Black and White
6 North Carolinians, with White people being more advantaged
7 relative to Black people.

8 So statewide, Black people are less likely to graduate
9 from high school and from college than White people. For
10 earning a bachelor's degree or higher, 25 percent -- sorry.
11 25.6 percent of Black North Carolinians have earned -- over
12 the age of 25 have earned a bachelor's or a postgraduate
13 degree compared with about 40 percent of White North
14 Carolinians. So just under a 15-point gap.

15 On the opposite, the lower end of the scale, about
16 10.9 percent of Black North Carolina residents over the age
17 of 25 have not earned a high school diploma compared with
18 about 6.7 percent of White North Carolina residents.

19 Q. Okay. Thank you, Dr. Burch.

20 I'm looking at the footnotes, and I see that you got
21 the data from the 2022 American Community Survey one-year
22 estimates. Is that a reliable source for this type of data
23 that experts in your field routinely rely on?

24 A. Yes. The American Community Survey is a survey that's
25 fielded by the Census Bureau. It has -- it's fielded

1 annually, typically hundreds of thousands of people respond
2 to it. And I've used it in my work, in my published work,
3 and my -- many, many other social scientists and political
4 scientists have as well.

5 Q. In addition to looking at statewide educational
6 attainment, did you also analyze racial disparities in
7 educational attainment in the Black Belt counties in
8 northeastern North Carolina?

9 A. Yes. I was asked to look at the county level as well.

10 Q. Great.

11 MR. JONES: Can we pull up Plaintiff's Exhibit 29,
12 which is Figure 4 from Dr. Burch's report.

13 Q. Dr. Burch, can you explain to the Court what this
14 chart is showing?

15 A. So this chart is like many of the others that I
16 produce in my report. In this particular chart, I am
17 showing you data from the American Community Survey, but
18 this time we're looking at the five-year estimates because
19 not every county is surveyed every year, so you can't look
20 at the one-year estimates. Some counties may be missing.

21 I have a rate across the bottom, the counties that I
22 was asked to examine. And along the Y axis, we're looking
23 at just the percent of the people in the county who don't
24 have a high school diploma. And so we see across all of
25 these counties, Black people, in the dark bars, have a much

1 higher rate of -- higher rate of Black lacking a high
2 school diploma. I'm sorry, that came out with some double
3 negatives there. Black people are much less likely to
4 graduate from high school than White people in all of these
5 counties. And these gaps are large.

6 So, for instance, in Halifax, it looks like the high
7 school dropout rate is almost double.

8 Q. And how about in Washington County? Can you just --
9 to help us make sure we read the chart correctly, give the
10 numbers for Black and White percentage in Washington County
11 that don't have a high school diploma and describe the
12 degree of that disparity.

13 A. So here in Washington County, in the last set of bars,
14 the darker bars for Black people in that county, it appears
15 about 22 or 23 percent don't have a high school diploma
16 compared with just under 10 percent of White people. And
17 so, again, that's more -- that gap is more than double.

18 Q. And this chart is showing that there is a racial
19 disparity in educational attainment with respect to it.
20 Obtaining a high school diploma in every single one of
21 these counties with White people uniformly having higher
22 rates of high school education, lower rates of not having a
23 high school diploma; is that right?

24 A. That's right.

25 Q. Okay. Can we go to Plaintiff's Exhibit 30, please,

1 which is Figure 5 from the report.

2 Q. Similar-looking chart, Dr. Burch. Can you tell the
3 Court what this chart is showing?

4 A. So this chart is showing the other end of the
5 distribution. So, again, it's from the American Community
6 Survey five-year estimates, but this time we're looking at
7 the percentage of people who have attained at least a
8 bachelor's degree. So a four-year college degree or
9 higher. And we can see, again, that this time White people
10 in each of the counties is more likely to have achieved at
11 least a bachelor's degree than Black people in the
12 counties.

13 Again, some of these gaps are quite large. For
14 instance, in Chowan County, we see about 8 percent of White
15 people -- sorry, about 8 percent of Black people have a
16 bachelor's degree or higher, compared with more than
17 30 percent of White people. Edgecombe and Northampton and
18 Warren counties also have large racial gaps as well.

19 Q. And it says there that this data is limited to age 25
20 and up. What's the rationale behind that?

21 A. Well, you've got to give people a chance to kind of
22 finish their education. So the Census Bureau typically
23 reports the data for that age range.

24 Q. Okay. In addition to educational attainment, did you
25 also analyze racial disparities in student test scores in

1 North Carolina?

2 A. I did.

3 MR. JONES: Can we pull up Plaintiff's Exhibit 24,
4 which is Figure 1 from the report.

5 Q. Dr. Burch, there's a lot of information in this chart.
6 Can you explain what this chart is showing and help us by
7 focusing the Court on the specific lines that are relevant
8 here to your analysis here?

9 A. Yes. So this chart is looking -- is a portion of a
10 chart taken from the North Carolina Department of Public
11 Instruction. And it's looking at recent data on the
12 percentage of students statewide who are at or above
13 proficiency in both reading and math. And what I want to
14 call your attention to is in the chart, the burgundy bars,
15 kind of like the ones that are second from the top, are
16 White students and the light purple bars at the bottom are
17 Black students.

18 And I think the takeaway from this chart is that there
19 is a consistent racial gap in achievement in terms of
20 proficiency statewide even though there are several Black
21 bars here that show a discontinuity in terms of how the
22 tests are calculated. So across testing situations, across
23 different kinds of standards, the test score gap persists.

24 One other point I want to make here is that if we want
25 to look, historically, ending in the 2018/2019 year, that

1 gap in proficiency was about three to one. So about
2 42 percent of White students compared to 14 percent of
3 Black students with COVID, that gap is increased. So
4 almost four to one in terms of proficiency.

5 Q. And can you just give those specific numbers for the
6 2021 to 2022 school year, just to help us understand this
7 chart? Like, what are the specific percentages of both
8 Black and White students grades three through eight who are
9 at or above proficiency in both reading and math in North
10 Carolina?

11 A. So 29.4 percent of White students are at or above
12 proficiency in both reading and math, compared with
13 7.4 percent of Black students.

14 Q. And what's your observation, Dr. Burch, about the
15 scope or degree of that racial disparity in reading and
16 math proficiency for all students in North Carolina grades
17 three through eight?

18 A. Again, the gap between Black and White students has
19 increased to about four to one.

20 Q. Did you also analyze racial disparities in test scores
21 in the Black Belt counties?

22 A. I did.

23 MR. JONES: Can we pull up Plaintiff's Exhibit 27,
24 which is Figure 2 from the report.

25 Q. This is another chart that looks similar in kind to

1 the others we saw earlier. Dr. Burch, can you tell us what
2 this chart is showing?

3 A. Yes. So this chart is looking at data from the 2023
4 County Health Rankings. And it, in turn, is pulling data
5 from the 2018 Stanford Education Data Archive. And what
6 they're trying to do is standardize reading -- reading test
7 scores across the country at the county level. And what
8 they report in this chart, again, for each county is a --
9 is a raw score. And that raw score is for third grade
10 reading translate -- three, translates into proficient at
11 the third grade level. A score of three and a half means
12 you're a half a year ahead. Whereas, a score of two and a
13 half means you're half a year behind proficiency at the
14 third grade level. So, like, second grade and a half, for
15 instance.

16 Q. Go ahead.

17 A. I was just going to say, my conclusions from this
18 chart are, again, in each of the counties, I was asked to
19 examine White students, the light gray bars, are
20 outperforming Black students. And just to take an
21 example --

22 Q. How about Halifax?

23 A. Yeah, if we just look at Halifax County, for instance,
24 it looks like White students are right at about three, so
25 right at about proficient on average, compared with Black

1 students being at 2.5, which means they're about a half a
2 year behind.

3 Q. Are Black students on average at grade level in
4 reading in any of these counties?

5 A. No. The closest is at -- is in Hertford County. But
6 again, the average does not reach to grade level.

7 Q. Are White students on average at grade level in
8 reading scores in any of these counties?

9 A. Mostly yes. They are either above or fairly close,
10 including, again, Gates County is pretty close to three.

11 Q. Okay. It looks like there are two that are either
12 just at or below the line. So clearly at least nine of --
13 nine of these level counties, White third graders are at or
14 above grade level in reading?

15 Q. Yes.

16 MR. JONES: Can we pull up Plaintiff's Exhibit 28,
17 which is Figure 3 from Dr. Burch's report.

18 Q. Dr. Burch, what is this chart showing in relation to
19 the prior chart?

20 A. So this chart is showing similar data from the County
21 Health Rankings except this one is looking at math scores
22 for third grade by race. And again, same rubric: The
23 score of 3 indicates performance at grade level. And what
24 we can see here is that, again, in all of the counties that
25 I was asked to examine, White students are ahead of Black

1 students in terms of their average math scores and whether
2 they're proficient.

3 And again, say Martin County, the -- because it's just
4 easiest to see, Black students are, again, at about 2.5.
5 So that's, again, second grade and a half, whereas White
6 students are more than half a year ahead of Black students
7 in that county.

8 Q. Are Black students on average at or above third grade
9 reading level in math in any of these counties?

10 A. No. The closest they appear to come is in Hertford
11 County.

12 Q. And how about White students? Are White students at
13 or above grade level in math on average in any of these
14 counties?

15 A. Yes, in some counties. In most counties, actually,
16 they're either pretty close -- so, for instance, Bertie
17 County is pretty close to 3. And the only one that is
18 appreciably lower than is in Edgecombe and in Washington
19 counties.

20 Q. Dr. Burch, turning to page 3 of your rebuttal report,
21 which is Plaintiff's Exhibit 117, the legislative
22 defendants' expert Dr. Taylor had written, quote, "The
23 racial gap for third graders in these counties is
24 relatively small. The average for the 11 counties is 0.63
25 points for reading and 0.5 points for math in terms of the

1 scope of the gap."

2 What's your reaction to Dr. Taylor's assertion that
3 those gaps are relatively small?

4 A. So Dr. Taylor, when he makes that claim, doesn't seem
5 to acknowledge or take into account that these data are --
6 the County Health Rankings are presenting proficiencies in
7 terms of time. So, again, the score of .63 points for
8 reading and half a point for math is translating into
9 months. So half a year, two thirds of the year.

10 Moreover, you can also think about the fact that those
11 disparities in terms of average scores translate into big
12 racial gaps in proficiency. So if you look at data from
13 North Carolina's Department of Public Instruction, when we
14 just look at this region, the northeast region of North
15 Carolina, only 28 percent of Black students were proficient
16 in third grade reading in 2018 compared to 55 percent of
17 White students. So those gaps are -- translate into much
18 bigger gaps in proficiency than Dr. Taylor seems to
19 account. Math is even bigger. The proficiency gap --
20 33 percent of Black students were proficient in third grade
21 math compared to 64 percent of White students.

22 Q. So thinking about those gaps of .63 points for reading
23 and .5 points for math, does that mean that by third grade
24 when kids have only been in school for a few years, on
25 average a Black child in North Carolina is almost two

1 thirds of a year behind the average White student in
2 reading and half a year behind the average White child in
3 math?

4 A. Yes. And even though as you suggested with -- this is
5 just third grade. Research on several states including
6 North Carolina finds that there's consistent and very
7 strong relationships between third grade test scores and
8 high school tests, advanced course taking, and graduation.
9 So early success and early patterns in third grade do
10 predict later success in high school and beyond.

11 Q. Okay. Turning to page 5 of the rebuttal report. In
12 response to your analysis regarding the disparities in --
13 in having a college degree, Dr. Taylor had noted that in
14 2023, Black student enrollment across all of the UNC system
15 colleges was 21.2 percent, which is close to parity with
16 the overall Black share of the population statewide.
17 What's your response to that analysis by Dr. Taylor?

18 A. I think that Dr. Taylor, when he writes that in
19 general of enrollment, the UNC system -- systemwide has
20 reached parity, it -- it hides -- it obfuscates that the
21 ability of Black students to attend campuses across the
22 system varies. So as we know from *Brown* and the precursor
23 higher education cases, campuses differ in terms of
24 prestige and the kinds of resources that they can offer
25 students. And so when we think about Black enrollment at

1 the flagship University of North Carolina at Chapel Hill,
2 Black enrollment at UNC-Chapel Hill has fallen in the past
3 20 years. And it fell to 7.8 percentage points in 2024,
4 down from ten and a half percentage points the year before.
5 So, again, the trend is not a positive one in terms of
6 how -- of Black representation at the flagship university.

7 Q. What was the trend in White student enrollment from
8 2023 to 2024?

9 A. It increased slightly.

10 Q. Did you also analyze racial disparities in student
11 discipline in North Carolina?

12 A. I did.

13 Q. And if you'd turn to page 8 of your opening report,
14 please tell us what you found.

15 A. So on page 8 of my opening report, I found that there
16 are racial disparities in school discipline. So Black
17 students are 24 and a half percent of North Carolina public
18 school students but are 52.1 of students given short-term
19 suspensions and 55.6 percent of students given long-term
20 suspensions and 64.6 percent of students expelled from
21 North Carolina public schools. And school suspensions do
22 increase subsequent arrests and other antisocial behavior
23 in youth, so they can sometimes do more harm to those
24 students than good.

25 Q. In light of all the data that we've looked at and

12:40:48 1 additional data that are included in your reports, what did
12:40:50 2 you -- what conclusions did you reach about the existence
12:40:55 3 and the extent or degree of racial disparities between
12:41:00 4 Black and White people in education in North Carolina?

12:41:04 5 A. I think that I've shown that there are clear gaps in
12:41:07 6 terms of education between Black and White North
12:41:13 7 Carolinians along several measures. For instance, both in
12:41:17 8 terms of educational attainment, but also looking at
12:41:21 9 contemporary students and the kinds of educational
12:41:25 10 disparities that they're facing as well.

12:41:26 11 Q. And is that true both on a statewide basis and in the
12:41:30 12 Black Belt counties specifically?

12:41:31 13 A. Yes. That's true both statewide and in all of the
12:41:34 14 counties that I looked at for this case.

12:41:38 15 Q. Senate Factor 5 speaks in terms of members of the
12:41:42 16 minority group bearing the effects of discrimination. Did
12:41:45 17 you analyze whether those racial disparities in education
12:41:49 18 that exist in North Carolina today result from historical
12:41:54 19 and contemporary discrimination against Black people?

12:41:57 20 A. I did.

12:41:58 21 Q. Please tell the Court what you found on that issue.

12:42:02 22 A. So first of all, I did find in -- with respect to
12:42:07 23 historical discrimination, of course, North Carolina, like
12:42:12 24 many states, did -- did keep school districts K through 12,
12:42:23 25 as well as in higher education, segregated by race by law.

1 And they maintained that system well after the Supreme
2 Court ruled segregated public schools unconstitutional in
3 *Brown v. Board* in 1954 and after the Congress outlawed
4 segregation of public accommodations in the Civil Rights
5 Act of 1964.

6 So even after those rulings and laws, school districts
7 in North Carolina still refused to desegregate. So by
8 1961, the Southern Educational Reporting Service found that
9 only 11 out of 173 school districts and five of 17 state
10 universities had desegregated. But even then desegregation
11 in that context meant only 203 out of 60,000 Black K
12 through 12 students actually attended school with White
13 children. So even characterizing them as desegregated
14 was -- is somewhat of a misnomer.

15 North Carolina, because of massive resistance policies
16 because of the slow pace, it meant that school
17 desegregation really preceded beginning later in the 1960s
18 and early 1970s as the result of Supreme Court cases such
19 as *Salme* [phonetic]. And so, of course, that means that
20 we can -- because it's -- it's not that long ago, we can
21 still feel -- people still bear the effects of that
22 discrimination.

23 So I calculated that 19.7, nearly 20 percent, of North
24 Carolina's citizen voting age population is age 55 or older
25 and born in North Carolina. And that means that about one

12:44:07 1 fifth of North Carolina's electorate was likely to have
12:44:11 2 been educated in North Carolina during this time when the
12:44:14 3 state's districts were racially segregated by law. And so,
12:44:17 4 again, a fifth of the electorate was directly subject to
12:44:22 5 these kinds of legal educational segregation policies.

12:44:29 6 Q. Dr. Burch, in addition to those older or slightly
12:44:34 7 older North Carolinians who directly experienced legal
12:44:37 8 segregation in education as children in North Carolina, are
12:44:42 9 there generational effects on younger North Carolinians
12:44:45 10 that you can speak to?

12:44:47 11 A. Yes. So there's both the fact that, again, having --
12:44:52 12 as we'll talk -- as I'll mention later in my report, having
12:44:56 13 parents who have suffered educational discrimination bears
12:45:00 14 on income and employment and wealth. And so the kinds of
12:45:06 15 opportunities that parents can provide for their children
12:45:09 16 when they've been discriminated against are different --
12:45:13 17 are sometimes less than what you would -- a parent would be
12:45:16 18 able to provide otherwise.

12:45:17 19 But I also look at instances of educational
12:45:24 20 discrimination faced by people who are younger adults in
12:45:29 21 the electorate as well in my report.

12:45:33 22 THE COURT: It's time for us to have our 45-minute
12:45:35 23 lunch break. We'll be in recess for 45 minutes.

12:45:53 24 (A recess is taken at 12:45 p.m.)

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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NORTH CAROLINA
4
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6 CERTIFICATE OF OFFICIAL REPORTER
7

8 I, Jennifer C. Carroll, RMR, CRR, CRC,
9 Federal Official Court Reporter, in and for the United
10 States District Court for the Eastern District of North
11 Carolina, do hereby certify that pursuant to Section 753,
12 Title 28, United States Code, that the foregoing is a true
13 and correct transcript of the stenographically reported
14 proceedings held in the above-entitled matter and that the
15 transcript page format is in conformance with the
16 regulations of the Judicial Conference of the United
17 States.
18
19

20 Dated this 26th day of February, 2025.
21

22 

23 /s/ Jennifer C. Carroll
24 Jennifer C. Carroll, RMR, CRR, CRC
25 U.S. Official Court Reporter